

**A CABLE FRANCHISE AGREEMENT
BETWEEN FAIRFAX COUNTY, VIRGINIA
AND MEDIA GENERAL CABLE OF FAIRFAX COUNTY, INC.**

Approved by the Fairfax County Board of Supervisors on May 11, 1998

**CABLE FRANCHISE AGREEMENT
FAIRFAX COUNTY, VIRGINIA**

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**CABLE TELEVISION FRANCHISE AGREEMENT
BETWEEN FAIRFAX COUNTY, VIRGINIA
AND MEDIA GENERAL CABLE OF FAIRFAX COUNTY, INC.**

THIS CABLE FRANCHISE AGREEMENT (the "Franchise Agreement") is entered into by and between Fairfax County, Virginia ("County"), and Media General Cable of Fairfax County, Inc., a Virginia Corporation ("Media General") as of June 1, 1998 (the "Effective Date").

WHEREAS, Media General has asked the County to renew Media General's nonexclusive Franchises (the "Prior Franchises") to own, construct, reconstruct, install, maintain, operate, dismantle, test, upgrade, repair, use, and remove a Cable System (as hereinafter defined) in the County; and

WHEREAS, the construction, installation, reconstruction, maintenance, operation, dismantling, testing, upgrade, repair, use, and removal of such a system involves the occupation of and placement of private commercial facilities along, under, over, above, through or across the Public Rights-of-Way or public land within the County; and

WHEREAS, the County has reviewed Media General's performance under the Prior Franchises and the quality of service during the term of the Prior Franchises, has identified the future cable-related needs and interests of the County and its citizens, has considered the financial, technical and legal qualifications of Media General, has determined whether Media General's plans for constructing, operating and maintaining its Cable System are adequate, and has determined that the foregoing meet the requirements of 47 U.S.C. § 546 in a full public proceeding affording due process to all parties; and

WHEREAS, the County has relied on Media General's representations contained in this Franchise Agreement and has considered the information that Media General has presented to it; and

WHEREAS, based on Media General's representations in this Franchise Agreement, the Board has determined that, subject to the terms and conditions set forth herein and the provisions of Chapter 9 of the Code of the County of Fairfax, known as the Fairfax County Cable Communications Ordinance (the "Cable Ordinance" or "Ordinance"), the grant of a new nonexclusive Franchise to Media General, to supersede the Prior Franchises, is consistent with the public interest; and

WHEREAS, the County and Media General have reached agreement on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the County's grant of a new Franchise to Media General; Media General's promise to provide Cable Service to residents of the County pursuant to and consistent with the Cable Ordinance; the terms and conditions set forth herein, the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which are hereby acknowledged;

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

1 DEFINITIONS.

When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined herein or in the Cable Ordinance shall be given the meaning set forth in Va. Code § 15.2-2108 or, if not in conflict, Title 47 of the United States Code, as amended, and if not defined therein, their common and ordinary meaning.

(a) *Affiliate*: Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with the Grantee.

(b) *Basic Cable Service*: The HSN service tier which includes the following: at least (i) all domestic television broadcast signals carried in fulfillment of the requirements of 47 U.S.C. §§ 534 and 535 (except any signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Grantee’s Cable System); (ii) any public, educational, and governmental access programming required by the Franchise Agreement to be provided to Subscribers as basic service; and (iii) any additional video programming signals or service added to basic service by the Grantee.

(c) *Board*: The Board of Supervisors of the County of Fairfax, Virginia.

(d) *Cable Act*: Title VI of the Communications Act of 1934 (47 U.S.C. § 521, et seq.) and any amendments thereto.

(e) *Cable Ordinance*: Chapter 9 of the Code of the County of Fairfax.

(f) *Cable Service:* (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

(g) *Cable System:* A facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act of 1934, except that such facility shall be considered a cable system (other than for purposes of 47 U.S.C. § 541(c)) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with 47 U.S.C. § 573; or (E) any facilities of any electric utility used solely for operating its electric utility system.

(h) *Communications Administrator:* The present or succeeding employee of Fairfax County designated as the Cable Television Administrator or as the Communications Administrator who shall have the duties prescribed in the Cable Ordinance and as otherwise prescribed by the Board.

(i) *Channel:* A portion of the electromagnetic frequency spectrum that is used in Grantee's Cable System and that is capable of delivering a video signal as that term is defined by the FCC as of the Effective Date of this Agreement.

(j) *County:* The County of Fairfax, Virginia.

(k) *Demarcation Point:* For purposes of the HSN, a Demarcation Point for cable drops in existence as of the Effective Date shall be the point of interconnection of Grantee's Cable System with customer-provided equipment or wiring as of the Effective Date; for cable drops installed after the Effective Date, it shall be a point agreed upon by the Grantee and the County up to twelve inches inside the building wall and consistent with Grantee's direction of approach to the building, consistent with the FCC's rules as of the Effective Date of this Agreement or as later amended. For purposes of the I-Net, a Demarcation Point shall have the meaning given that term in Appendix 2. For purposes of PEG upstream feeds, a Demarcation Point shall be the point at which the equipment owned by the PEG origination site operator interconnects with Grantee's wiring and electronics.

(l) *Educational Access Channel or Educational Channel:* Any Channel required by this Franchise Agreement to be provided by Grantee to the County on the HSN for educational use.

(m) *Equitable Price:* Fair Market Value adjusted downward for the harm to the County or Subscribers, if any, resulting from the Grantee's breach of this Agreement or violation of the Cable Ordinance which resulted in the revocation of the Franchise, and as further adjusted to account for any other equitable factors that may be considered consistent with 47 U.S.C. § 547.

(n) *Fair Market Value:* The price which property will bring when it is offered for sale by one who desires, but is not obligated, to sell it, and is bought by one who is under no necessity of having it.

(o) *Federal Communications Commission or FCC:* That Federal agency as presently constituted by the Communications Act of 1934, as amended, its designee, or any successor agency.

(p) *Franchise:* The franchises granted pursuant to this Agreement.

(q) *Franchise Agreement or Agreement:* This contract and any amendments, exhibits or appendices hereto.

(r) *Franchise Area:* The North and South County Franchise areas, as defined in Section 9-7-1 of the Cable Ordinance, and any area added thereto during the term of the Franchise that is served by the Grantee as of the Effective Date of this Agreement or which the Grantee agrees to serve.

(s) *Franchise Fee:* This term shall have the meaning given to it in [Section 8\(a\)](#) herein.

(t) *Governmental Access Channel or Governmental Channel:* Any Channel required by this Franchise Agreement to be provided by Grantee to County on the HSN and set aside by the Grantee for government use.

(u) *Grantee:* Media General Cable of Fairfax County, Inc., a Virginia corporation, and its lawful and authorized successors, assigns, and transferees.

(v) *Grantee's Cable System:* The Cable System of the Grantee in the County, which shall be subject to either the Prior Franchises or the Franchise, as the context requires.

(w) *Gross Revenues:* Any and all cash, credits, property or consideration of any kind or nature that constitute revenue in accordance with Generally Accepted Accounting Principles and that arise from, are attributable to, or are in any way derived directly or indirectly by the

Grantee or its Affiliates, or by any other entity that is a cable operator of Grantee's Cable System, from the operation of the Grantee's Cable System to provide Cable Services, except as hereinafter specifically excluded. Consistent with the foregoing, the following, without limitation, shall be included in Gross Revenues to the extent derived from the operation of the Grantee's Cable System to provide Cable Services in the County: monthly fees collected from Subscribers for any basic, optional, premium, per-channel, per-program service, or cable programming service; installation, disconnection, reconnection, and change-in-service fees; fees, payments, or other consideration received from programmers for carriage of programming on Grantee's Cable System; revenues from rentals or sales of converters or other equipment; studio rental; fees from third party unaffiliated programmers for leased access programming; production equipment, rental fees and personnel fees; advertising revenues (except as otherwise provided hereinafter); revenues from the sale or carriage of other Cable Services; and revenues from home shopping and bank-at-home channels. Gross revenues shall not include any taxes on services furnished by a Grantee which are imposed directly on any Subscriber or User by the Commonwealth of Virginia, the County, or other governmental unit and which are collected by the Grantee on behalf of said governmental unit. A Franchise fee is not such a tax. Gross Revenues shall not include (i) any consideration paid by the County to the Grantee for the Institutional Network as set forth in Appendix 2 hereto, or any expense reimbursement paid by the County or its agents, or by PEG users, to the Grantee; (ii) any compensation awarded to Grantee based on the County's condemnation of property of Grantee; (iii) any uncollected receipts (*i.e.*, "bad debt"), provided, however, that all or any part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period

collected; (iv) revenues from program guides; (v) revenues from tower leases. With respect to advertising revenues derived from the operation of the Grantee's Cable System to provide Cable Services, the term Gross Revenues shall include thirty-five percent of the revenues paid by an advertiser to any Affiliate of Grantee; provided, however, that any amounts includable as Gross Revenues that are received by an Affiliate or any other entity that is a cable operator of Grantee's Cable System shall not be counted as Gross Revenues to the extent that such amounts are also received directly by the Grantee, to ensure that no such revenue is counted twice.

(x) *Home Subscriber Network or HSN:* The broadband communications network of Grantee's Cable System serving residential Subscribers in the Franchise Area. The HSN shall include all facilities and equipment provided by Grantee that are designed to provide Cable Service to residential Subscribers, including, but not limited to, converters and other terminal equipment.

(y) *Institutional Network or I-Net:* An institutional network constructed for the County's use which is not generally available to Subscribers and which is more specifically described in Section 7 herein.

(z) *Leased Access Channel or Commercial Access Channel:* Any Channel on the Grantee's Cable System designated or dedicated for use by a Person unaffiliated with the Grantee pursuant to 47 U.S.C. § 532.

(aa) *Net Income:* The amount remaining after deducting from gross revenues all of the actual, direct and indirect, expenses associated with operating the Grantee's Cable System, including the Franchise Fee, interest, depreciation and all taxes, all as determined in accordance with Generally Accepted Accounting Principles.

(bb) *Normal Operating Conditions:* Those conditions that are within the control of the Grantee. Conditions that are not within the control of the Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, weather or traffic conditions impairing construction or normal operation activities, vandalism, accidents for which Grantee is not primarily responsible, sabotage, and the action or inaction of any governmental unit. Consistent with the foregoing, conditions that are within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or reasonably anticipatable peak or seasonal demand periods, and maintenance or upgrade of Grantee's Cable System.

(cc) *Department of Consumer Affairs:* The Fairfax County Department of Telecommunications and Consumer Services or any successor agency that is designated by the Board to perform the functions of that Department.

(dd) *PEG:* Public, educational, and governmental.

(ee) *Person:* An individual, partnership, association, joint stock company, organization, corporation, or any lawful successor thereto or transferee thereof, but such term does not include the County.

(ff) *Public Access Channel:* Any Channel required by this Franchise Agreement to be provided by Grantee to County on the HSN and set aside by the Grantee for use by the general public who are residents of the Franchise Area, including groups and individuals, and which is available for such use on a non-discriminatory basis.

(gg) *Prior Franchises*: The cable television franchises for the North and South County areas as defined in the Cable Ordinance accepted by Media General Cable of Fairfax County, Inc., on September 30, 1982.

(hh) *Public Rights-of-Way*: The surface, the air space above the surface, and area below the surface of any public street, highway, lane, path, alley, sidewalk, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, public water or public easements, or other public way within the County, which consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.

(ii) *Rate Regulated Services*: All services subject to rate regulation by the County pursuant to applicable law, including Basic Cable Service, all equipment provided by Grantee to a Subscriber's home which is used to receive Basic Cable Service, regardless of whether such equipment is used to receive other regulated or unregulated services, and the installation of all equipment which is used to receive Basic Cable Service. Such equipment shall include, but is not limited to: (i) converter boxes; (ii) remote control units; and (iii) connections for additional television receivers.

(jj) *Security Deposit*: The funds deposited by Media General pursuant to [Section 11\(b\)](#) of this Agreement.

(kk) *Service Tier*: A category of Cable Service or other services provided by the Grantee's Cable System consisting of one or more video programming services that are offered as a package and for which a separate rate is charged by the Grantee.

(ll) *Subscriber:* Any member of the general public who contracts with Grantee to receive or otherwise lawfully receives (except for resale) Grantee's Basic Service and/or any one or more of such other Cable Services as may be provided on the HSN.

(mm) *System Upgrade:* A major improvement or enhancement in the technology or service capabilities made by the Grantee to Grantee's Cable System, as more fully described in [Section 6](#) herein.

(nn) *User:* A Person or organization using a PEG Channel or equipment and facilities for purposes of producing or transmitting material, as contrasted with the receipt thereof in the capacity of a Subscriber.

(oo) *Video Programming:* Programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

2 GRANT OF AUTHORITY; LIMITS AND RESERVATIONS

(a) *Grant of Authority.* Subject to the terms and conditions of this Agreement and the Cable Ordinance, the County hereby grants the Grantee the right to own, install, construct, reconstruct, operate, maintain, dismantle, test, upgrade, repair, use and remove a Cable System along, under, over, above, through or across or in any manner connected with the Public Rights-of-Way or public land within the Franchise Area, for the sole purpose of providing Cable Service. This Franchise shall grant no authority for the Grantee to use the County's Public Rights-of-Way or public land for any purposes other than the provision of Cable Service, except to the extent other services may be provided pursuant to [Section 7](#) herein or as hereinafter

expressly provided. The consideration provided by Grantee under this Agreement shall be the only consideration due or required from the Grantee to the County for the right to use and occupy the Public Rights-of-Way and public land. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit the Grantee's use for specific purposes, and the Grantee shall be deemed to gain only those rights to use that are within the County's power to convey. No privilege or power of eminent domain is bestowed by this grant or by this Agreement. This Agreement does not confer any rights other than as expressly provided herein or as implied under federal, state or local law.

(b) Area Served.

(1) The Franchise is granted for the Franchise Area defined herein.

(2) The Grantee shall build Grantee's Cable System so that it is able to provide service to all Subscribers and potential Subscribers passed by the Grantee's Cable System as of the Effective Date of this Agreement and to other areas in accordance with the line extension policy attached hereto as Appendix 1 (the "Line Extension Policy"). It must build Grantee's Cable System so that it can extend service to all residents geographically located within the Franchise Area, including residents located in areas which may be added to the County's jurisdiction in the future subject to the Line Extension Policy, in accordance with the provisions of this Agreement, unless this requirement is waived in writing by the County.

(c) Term. The Franchise and this Franchise Agreement shall extend for a term of fifteen years, commencing on the date accepted below by the Grantee, unless the Franchise is earlier revoked or its term shortened as provided herein or in the Cable Ordinance, or unless the

Franchise is renewed or extended by mutual agreement, including but not limited to an extension pursuant to [Section 6\(o\)](#) herein.

(d) *Grant Not Exclusive.* The Franchise and the right it grants to use and occupy the Public Rights-of-Way and public land shall not be exclusive. The County reserves the right to grant other franchises, as consistent with state and federal law, for other uses of the Public Rights-of-Way and public land, or any portions thereof, to any Person, or to make any such use itself, at any time during the term of this Franchise Agreement, with or without a franchise, but in no event inconsistent with the rights granted herein.

(e) *Franchise Agreement Subject to Other Laws.* This Franchise Agreement is subject to and shall be governed by all applicable provisions of federal, state, and local law.

(f) *Franchise Agreement Subject to Exercise of Police Powers.* All rights and privileges granted herein are subject to the exercise of the police powers of the County and its rights under applicable laws and regulations to reasonably exercise its police powers to their full extent and to regulate the Grantee and the construction, operation and maintenance of the Grantee's Cable System, including, but not limited to, the right to adopt and enforce additional ordinances and regulations as the County shall find necessary in the exercise of its police powers, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations containing Public Rights-of-Way, telecommunications, utility and cable television consumer protection and service standards and rate regulation provisions.

(g) *Material Alteration.* Notwithstanding [Section 2\(i\)\(1\)](#) or [2\(i\)\(4\)](#) herein, if the Grantee's rights, benefits, obligations or duties specified in this Agreement are materially altered as the result of changes in County ordinances that are incorporated by reference or otherwise, then this Agreement shall be promptly amended so that the rights, benefits, obligations and duties of Grantee set forth in this Agreement as of the Effective Date are preserved or restored to the maximum extent possible, with such amendment to be effective as of the date of the material alteration. In the event that the parties are unable to agree upon an amendment, the scope of any amendment shall be determined by a court of competent jurisdiction.

(h) *Approval and Effective Date.* Subject to the conditions set forth in Paragraph 2 of Section A of Appendix H to the Fairfax County Code, this Franchise Agreement shall become effective on June 1, 1998.

(i) *Effect of Acceptance.* By accepting the Franchise and executing this Franchise Agreement, the Grantee:

(1) accepts and agrees to comply with the Fairfax County Code, including each provision of the Cable Ordinance and this Agreement, and waives its claim or right to claim as is required by Fairfax County Code § 9-9-8;

(2) acknowledges and accepts the County's legal right to grant the Franchise, to enter into this Franchise Agreement, and to enact and enforce ordinances and regulations related to the Franchise;

(3) agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law; and

(4) agrees that the County retains the absolute right to terminate this Agreement for any material violation by the Grantee of any substantive provision of Chapter 9 of the Code of the County of Fairfax or any term or condition hereof, which violation has not (i) been substantially corrected by Grantee within sixty days of receiving written notice from the County of such violation, or (ii) in the case of a violation which reasonably requires more than sixty days to correct, Grantee has undertaken substantive corrective action within sixty days of receiving written notice from the County of such violation and subsequently completes any necessary corrective action in a timely manner.

(j) Claims Related to Prior Franchises.

(1) The Grantee shall remain liable for payments of all franchise fees owed to the County, and operating grants owed to the County and other parties, under the Prior Franchises that are accrued but unpaid prior to the Effective Date. The grant of the Franchise shall have no effect on the Grantee's duty under the Prior Franchises to indemnify or insure the County against acts and omissions occurring during the period that the Prior Franchises were in effect; to return any overcharges that are determined to be due to Subscribers for the period that the Prior Franchises were in effect; and to correct any construction violations for which (i) written notice identifying the nature and location of the violation with sufficient specificity to allow the Grantee to correct the violation has been given to Grantee prior to the Effective Date of this Agreement and (ii) the violation has not been cured by the Effective Date of this Agreement.

(2) Except as provided in [paragraph \(1\)](#) above or in [Section 7\(k\)\(3\)](#) herein, as of the Effective Date of this Franchise Agreement, the Prior Franchises are superseded and are of

no further force and effect, and the County and the Grantee mutually release each other from any claims each had, has or may have against the other under the Prior Franchises.

(k) No Waiver.

(1) The failure of the County on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the County, nor to excuse the Grantee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Communications Administrator or designee.

(2) The failure of the Grantee on one or more occasions to exercise a right or to require compliance or performance under this Franchise Agreement, the Cable Ordinance or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the Grantee, nor to excuse the County from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the Grantee.

(3) No waiver by the County of any breach or violation of any provision of this Franchise Agreement or the Cable Ordinance shall be deemed to be a waiver or a continuing waiver by the County of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the County hereunder shall constitute a waiver of or a bar to the exercise of any police right or power of the County, including without limitation, the right of eminent domain.

(4) No waiver by the Grantee of any breach or violation of any provision of this Franchise shall be deemed to be a waiver or a continuing waiver by the Grantee of any subsequent breach or violation of the same or any other provision. By its execution of this Franchise Agreement, the Grantee does not waive any rights it may have under federal or state law, in the event that the County grants a franchise or other authorization to any other multichannel video programming provider after the Effective Date, as the result of a grant of such franchise or other authorization.

(l) *Amendment of Franchise Agreement.* This Agreement may only be amended by mutual written consent of the County and the Grantee, including but not limited to such consent and/or court order pursuant to [Section 2\(g\)](#) or [6\(o\)](#) hereof.

3 TRANSFERS

(a) County Approval Required.

(1) A Franchise shall be a privilege that is held in the public trust, and personal to the Grantee. The Grantee's obligations under this Agreement involve personal services whose performance involves personal credit, trust and confidence in the Grantee.

(2) No Transfer (as hereinafter defined) of the Franchise, the Grantee or the Grantee's Cable System, or control over the same (including, but not limited to, Transfer by forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless the requirements of § 9-5-13 of the Cable Ordinance are satisfied. Any Transfer which

does not comport with the requirements of § 9-5-13 of the Cable Ordinance shall be deemed to impair the County's assurance of due performance.

(b) *Subsequent Approvals.* The approval of a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

(c) *Approval Does Not Constitute Waiver.* Approval by the County of a Transfer does not constitute a waiver or release of the rights of either the Grantee or the County under this Agreement or the Cable Ordinance, whether arising before or after the date of the Transfer, nor does such approval constitute a waiver or release of the rights of the County and the public in and to the Public Rights-of-Way or public land, or a release of any police powers.

(d) *Definitions.*

(1) *Transfer:* Any transaction in which: (A) any ownership or other right, title, or interest in the Grantee, Grantee's Cable System, or any Person that is a cable operator of Grantee's Cable System, that would be cognizable pursuant to 47 C.F.R. § 73.3555 (Notes 1, 2, and 3) is transferred, sold, assigned, directly or indirectly; or (B) there is any change or acquisition of control of the Grantee that would be cognizable pursuant to 47 C.F.R. § 73.3555 (Notes 1, 2, and 3); or (C) the rights and/or obligations held by the Grantee under its Franchise are transferred, directly or indirectly, to another party (provided that nothing herein shall be construed to restrict Grantee from entering into any contracts with third parties for management, construction or other services related to Grantee's Cable System as long as such contracts do not result in a change of control as defined in 47 C.F.R. § 73.3555 (Notes 1, 2, and 3)); or (D) any change or substitution occurs in the managing general partners of the Grantee, where applicable.

(2) “Control” for purposes of this definition is not limited to majority stock ownership, but includes actual working control in whatever manner exercised as determined by the rules and policies of the FCC.

(3) Notwithstanding the foregoing, no Transfer of control shall be deemed to have occurred as long as the D. Tennant Bryan Media Trust retains control of the Grantee as determined by FCC rules and policies as interpreted by the FCC.

(e) *Notification of Certain Transactions.* Grantee will notify the County if at any time there is a mortgage or security interest granted on substantially all of the assets of Grantee’s Cable System, and will provide the County with copies of all loan documents with respect to such transaction as soon as such documents become publicly available and, if such documents do not become publicly available within ten business days after loan closing, will make such documents available for inspection pursuant to [Section 9\(a\)\(1\)](#) herein within ten business days after loan closing.

4 PROVISION OF CABLE SERVICE

(a) *Availability of Cable Service.* The Grantee shall make Cable Service available on the HSN in accordance with the terms of this Franchise Agreement to all residences, businesses and other structures within the Franchise Area, including multiple dwelling unit buildings, whose owners or occupants request Cable Service, except for multiple dwelling unit buildings and other locations to which the Grantee cannot legally obtain access; provided, however, that Grantee may refuse to provide Cable Service (i) when it is unable pursuant to normal industry practice to

obtain necessary programming, real property or other access rights, or (ii) when its prior service, payment, or theft of service history with a Person has been unfavorable, or (iii) pursuant to a written waiver by the Communications Administrator or designee.

(b) *Line Extension Requirements.* Service drops to residential Subscribers shall be governed by the Line Extension Policy attached hereto as Appendix 1. The line extension policy for commercial properties is based on published commercial rates for construction and installation costs.

(c) *Continuity of Service.*

(1) It is the right of all Subscribers in the Franchise Area to receive all available Cable Services they request from the Grantee as long as their financial and other obligations to the Grantee are satisfied; provided, however, that Grantee may refuse to provide Cable Service when (i) it is unable pursuant to normal industry practice to obtain necessary programming, real property or access rights, (ii) when its prior service, payment, or theft of service history with a Person has been unfavorable, or (iii) pursuant to written waiver by the Communications Administrator or designee.

(2) The Grantee shall operate Grantee's Cable System pursuant to this Franchise without interruption, except as otherwise provided in this Franchise Agreement. Following the expiration or revocation of its Franchise, the Grantee shall, at the County's request, as trustee for its successor in interest, operate Grantee's Cable System for a temporary period (the "Transition Period") as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from it to the County or another franchise holder.

(3) During the Transition Period, the Grantee shall not sell any of Grantee's Cable System assets, nor make any physical, material, administrative or operational change that would tend to degrade the quality of service to Subscribers, decrease Gross Revenues, or materially increase expenses without the express permission, in writing, of the County or its assigns.

(4) The County may seek legal and/or equitable relief to enforce the provisions of this Section.

(5) The Transition Period shall be no longer than the reasonable period required to arrange for an orderly transfer of cable service to the County or to another franchise holder, unless mutually agreed to by the Grantee and the County. During the Transition Period, the Grantee and the County will continue to be obligated to comply with the terms and conditions of this Agreement and applicable laws and regulations.

(6) For its management services during the Transition Period, the Grantee shall be entitled to receive as compensation the Net Income generated during the Transition Period.

(7) If the Grantee abandons Grantee's Cable System during the Franchise term, or fails to operate Grantee's Cable System in accordance with the terms of this Agreement during any Transition Period, the County, at its option, may operate Grantee's Cable System, designate another entity to operate Grantee's Cable System temporarily until the Grantee restores service under conditions acceptable to the County or until the Franchise is revoked and a new grantee selected by the County is providing service, or obtain an injunction requiring the Grantee to continue operations.

(8) The County shall be entitled to injunctive relief under the preceding paragraph if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise Agreement or the Cable Ordinance for a portion of the Franchise affecting over ten percent of the County's subscribers for one week, unless the County authorizes a longer interruption of service or the failure is due to *force majeure* as characterized in Section 12 herein; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise Agreement and the Cable Ordinance for a portion of the Franchise Area affecting over ten percent of the County's residents.

5 CONSTRUCTION AND MAINTENANCE

(a) Construction Schedule

(1) The Grantee shall construct and activate Grantee's Cable System in accordance with the requirements of the Fairfax County Code and the specifications contained in this Agreement.

(2) The Grantee agrees that it will make no charge or claim whatsoever to the County, for hindrance or delay of the work, from any cause during the progress of the same, but this limitation shall not prevent the Grantee from making a charge or claim asserting that the County has unreasonably withheld any permit required for the construction or activation of Grantee's Cable System.

(b) *Construction Standards.*

(1) The construction, operation, maintenance, and repair of Grantee's Cable System shall be substantially in accordance in all material respects with all applicable sections of the following standards and regulations, to the extent that such standards and regulations remain in effect and are applicable to Grantee's Cable System or to the construction, operation, maintenance and repair of a Cable System: the Occupational Safety and Health Act of 1970, as amended; the most current edition of the National Electrical Safety Code and National Electrical Code; Obstruction Marking and Lighting, AC 70/7460 *i.e.*, Federal Aviation Administration; Construction, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules Part 17; AT&T Manual of Construction Procedures (Blue Book); the Virginia Uniform Statewide Building Code; conditions embodied in Virginia Department of Transportation permits; County-mandated Department of Environmental Management permits and procedures; the National Cable Television Association Standards of Good Engineering Practices; Grantee's Construction Procedures Manual; any common shared easement or joint trenching arrangements to which the Grantee is a party; and other applicable federal, state, or local laws and regulations that may apply to the operation, construction, maintenance, or repair of a Cable System, including, without limitation, local zoning and construction codes and laws and accepted industry practices, all as hereafter may be amended or adopted. In the event of a conflict among codes and standards, accepted cable industry practices shall control (except insofar as such practices, if followed, would result in a Cable System that could not meet express requirements of federal, state or local law, or in instances in which such practices are expressly preempted by other standards). Consistent with the foregoing, the County may ensure that work

continues to be performed in an orderly and workmanlike manner, reflecting any changes that may occur over the Franchise term.

(2) In the event of any deregulation of technical or other standards for construction, installation, operation or maintenance of Grantee's Cable System, such standards or regulations shall be suspended. To the extent permitted by applicable law, the County reserves the right to adopt and impose such standards as it may deem necessary or appropriate, after notice to Grantee and opportunity for Grantee to participate.

(3) All wires, cable lines, and other transmission lines, equipment, and structures shall be installed and located consistent with cable industry practices, and where feasible without additional cost to Grantee, in such a manner as to cause minimum interference with the rights and convenience of property owners (including the County) and users of the Public Rights-of-Way and other public property. The County may from time to time issue reasonable rules and regulations, after notice to Grantee and opportunity for Grantee to participate, concerning the construction, operation and repair of Grantee's Cable System as appropriate to ensure compliance with this Section.

(4) Without limiting the foregoing, antennae and their supporting structures (towers) shall be designed in accordance with the Virginia Uniform Statewide Building Code as amended, and shall be painted, lighted, erected, and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local laws, codes, and regulations, all as hereafter may be amended or adopted.

(5) Without limiting the foregoing, all of the Grantee's plant and equipment, including, but not limited to, the antennae site, headend and distribution system, towers, house

connections, structures, poles, wires, cable, coaxial cable, fiber optic cable, fixtures, and apparatuses shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained, and operated in accordance with good engineering practices, performed by experienced and properly trained maintenance and construction personnel.

(6) The Grantee shall maintain all wires, conduits, cables, and other real and personal property and facilities comprising Grantee's Cable System in good condition, order and repair. Consistent with [subsection \(1\)](#) above, all safety practices required by law shall be used during construction, maintenance, and repair of Grantee's Cable System. The Grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents.

(7) No construction, upgrade, rebuild, reconstruction, maintenance, or relocation of Grantee's Cable System, or any part thereof, within any Public Rights-of-Way or public land shall be commenced unless permits have been obtained from proper officials, except that in case of emergency, the Grantee may carry out such work to the extent necessary pending the issuance of such permits, as long as the Grantee acts to secure such permits as soon as possible. The County shall pay the County fees associated with such permits.

(8) Prior to commencing any (i) significant alteration of the cable plant, (ii) other work that would require a construction permit, or (iii) any work on other public property, the Grantee shall provide the County with 24 hours' prior notice of such work, when possible, so that the County may perform appropriate inspections to ascertain compliance with applicable construction codes and standards. If 24 hours' prior notice cannot be furnished, the Grantee shall provide the County with the maximum amount of notice feasible under the circumstances. If

prior notice cannot be provided before commencing such work in the Public Rights-of-Way or other public property, the Grantee shall notify the County as soon as possible thereafter. For purposes of this provision, notice shall where appropriate include the tax map location of the work proposed or performed, and the date such work will begin.

(9) Except in emergency situations, neither the Grantee nor any other Person acting as agent for Grantee shall open or otherwise disturb or damage any street, sidewalk, driveway, Public Rights-of-Way or public land, public property or private property for any purpose whatsoever without obtaining required authorization to do so, and shall, at its own cost and expense, restore, repair and replace any property disturbed, damaged or in any way injured by or on account of its activities substantially to its condition immediately prior to the disturbance, damage or injury (including appropriate landscape restoration); provided, however, that with respect to landscape restoration efforts, Grantee shall not be responsible for the maintenance and watering thereof, and Grantee shall not be required to resod lawns where reseeding would, within a reasonable period of time, restore the lawn substantially to its condition immediately prior to the disturbance. Grantee shall not be required to repave all or a substantial portion of a driveway if patching would be consistent with normal road repair requirements. Under Normal Operating Conditions, such repair or restoration shall be completed at the later of thirty days from the date the damage is incurred or thirty days from when the work causing such damage is completed. Any restoration of private property by Grantee shall be done in accordance with Grantee's contractual obligation to affected landowners. The Grantee shall guarantee such restoration (other than landscaping restoration) for at least one year against defective materials and workmanship. In the event of a failure by the Grantee to complete any

work required for the protection or restoration of the Public Rights-of-Way, public land, or any other property as required by this [subsection 5\(b\)\(9\)](#), within the time specified in this Franchise Agreement, the County, following adequate written notice and a reasonable opportunity to cure, may cause such work to be done, and the County shall submit an itemized list of such costs to Grantee as well as any materials reasonably requested by Grantee to verify such costs. Following the Grantee's receipt of such itemized list and supporting materials, the Grantee shall reimburse the County the cost thereof within thirty days, or the County may recover such costs through the performance bond provided by Grantee.

(10) The Grantee agrees to submit disputes or disagreements between itself and a Subscriber to the County's Department of Consumer Affairs, or to such other similar service as may, from time to time, be offered by the County, for mediation and, to the extent permitted by law, for independent arbitration pursuant to the Virginia Uniform Arbitration Act.

(11) The Grantee shall cooperate with all gas, electric, telephone, water, sewer and other utilities in the placement of facilities, equipment, or fixtures, to minimize the costs and disruption caused by any construction activities.

(12) The Grantee shall seek to shore up, sling, support, protect and make good, as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits, ducts, manholes, drains, vaults, buildings, tracks or other structures, or sub-structures of public utility companies, and all service lines and structures, including sub-structures of private abutting owners, that are located within the lines of Grantee's Cable System construction that may be liable to disturbance or injury during the progress of the construction. All necessary supports and all labor and material necessary to reconnect and restore all such structures that become

disturbed or damaged to substantially their original condition shall be provided by the Grantee at its own cost and expense.

(13) If the County becomes aware of any relocation projects that may require the Grantee to protect, support, temporarily disconnect, relocate, or remove any of Grantee's property, then the County shall promptly notify the Grantee of the extent and likelihood of any such projects. Upon reasonable notice in accordance with the preceding sentence (except in the case of emergency repairs), the Grantee shall, by a time specified by the County, protect, support, temporarily disconnect, relocate, or remove any of its property when reasonably required by the County by reason of traffic conditions; public safety; Public Rights-of-Way or public land construction; Public Rights-of-Way or public land maintenance or repair (including resurfacing or widening); change of Public Rights-of-Way or public land grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work or improvement or any government-owned utility. Grantee shall be entitled to reimbursement of its costs and expenses.

(14) If the Grantee abandons any portion of Grantee's Cable System located in Public Rights-of-Way or on public land (i.e., permanently deactivates and leaves it in place), the County may require that such plant be removed at the Grantee's expense, at any time (i) if necessary, to make room for other facilities or (ii) if required by sound engineering practices, or (iii) to remove potential safety hazards. If Grantee requests to leave such an underground portion of Grantee's Cable System in place, the County shall grant such request upon a showing by the Grantee that its existing arrangements are safe and consistent with accepted underground utility practices as well as any other obligations it may have (such as pole attachment agreements).

(15) If any Person that is authorized to place facilities in the Public Rights-of-Way or on public land requests the Grantee to remove, relocate, protect, support, or temporarily disconnect its facilities to accommodate the construction, operation or repair of the facilities of such other Person at any time during the term of the Agreement, then the Grantee shall, upon request and reasonable notice from such party and consistent with applicable law, remove, relocate, protect, or alter the Grantee's Cable System, or any part thereof, and such Person shall reimburse the Grantee for the Grantee's costs and expenses; provided, however, that Grantee may require such payment in advance when its prior payment history with the requesting Person has been unfavorable.

(16) In the event of an emergency, or where the Grantee's Cable System creates or is contributing to an imminent danger to health, safety, or property, or an unauthorized use of property, the Grantee shall remove or relocate any or all parts of Grantee's Cable System at the request of the County. If the Grantee fails to comply with the County's request, the County may remove or relocate any or all parts of the Grantee's Cable System upon reasonable notice to Grantee. If Grantee's compliance with the County's request pursuant to this subsection results in the breach of any of Grantee's obligations under this Agreement, and Grantee has so notified the County before complying with the County's request, Grantee shall not be liable for its failure to satisfy such obligations.

(17) The Grantee shall, on the request of any Person holding a valid building moving permit issued by the County, or on request of the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same, and the Grantee shall have the

authority to require such payment in advance, except in the case where the requesting person is the County, in which case the Grantee will invoice the County, and the County will pay, following completion of work. The Grantee shall be given reasonable advance notice in writing to arrange for such temporary wire changes.

(18) The Grantee shall have the authority to trim trees and shrubs, at its own expense, so as to prevent the branches of such trees or shrubs from coming in contact with the facilities, wires and cables of the Grantee.

(19) The Grantee shall use, with the owner's permission, existing poles, conduits and other facilities whenever feasible and consistent with the design of Grantee's Cable System. The Grantee may not erect or emplace poles, conduits, or other facilities in Public Rights-of-Way or on public land without obtaining appropriate permits. Any permits from the County shall not be unreasonably withheld and shall be free of charge to the Grantee.

(20) Grantee's Cable System's cable and facilities may be constructed overhead where poles now exist and electric or telephone lines or both are now overhead, but where no overhead poles exist all cables and facilities, excluding passive or active electronics of Grantee's Cable System that may be housed in low-profile, above-ground pedestals, shall be constructed underground. Whenever and wherever a property owner causes or requests electric lines and telephone lines to be moved from overhead to underground placement, all Grantee's Cable System cables shall likewise be moved underground and the cost of movement of its cable shall be paid for by the requesting party. Whenever and wherever the County causes or requests electric lines and telephone lines to be moved from overhead to underground placement, all Grantee's Cable System cables shall likewise be moved underground, and the County shall pay

for the cost of movement of such cable. Except as federal law may otherwise require, in any area where the Grantee would be entitled to install a drop above-ground, the Grantee shall provide a homeowner with the option of having the drop installed underground, and may charge the homeowner the difference between the actual cost of the above-ground installation and the actual cost of the underground installation. Notwithstanding the foregoing, all underground new or replacement wiring installed after the Effective Date of this Agreement on County public land not part of the Public Rights-of-Way must be located in conduit composed of concrete or in PVC pipe or polyethylene pipe, or may be directly buried if enclosed in armored cable. New buried cable and facilities shall be capable of location using locating devices commonly available at the time of installation.

(21) The Grantee shall make available to other users of the Public Rights-of-Way and public land at a reasonable, non-discriminatory rental rate any of its excess conduits, so long as such conduits are in excess of any current or any future projected needs of operation of Grantee or its affiliates.

(22) The Grantee shall be a member of the regional notification center for subsurface installations, which shall field mark the locations of its underground facilities upon request.

(23) Prior to erection or placement of any towers, poles, or conduits, the Grantee shall first submit to the County a description of Grantee's Cable System facilities proposed to be erected or installed as set forth in [Section 6\(e\)](#) of this Agreement, indicating the proposed location of such facilities.

(24) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of Grantee's Cable System equipment must be properly licensed under the laws of the Commonwealth of Virginia and all local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Grantee would have if the work were performed by the Grantee. The Grantee shall seek to employ contractors, subcontractors and employees to perform work for it who are trained and experienced. The Grantee shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the Franchise and applicable laws, regulations, policies and procedures, shall be fully responsible for all acts or omissions of contractors or subcontractors and shall be responsible for promptly correcting acts or omissions by any contractor or subcontractor.

(25) The County does not guarantee the accuracy of any maps showing the horizontal or vertical location of existing substructures.

(26) Prior to the beginning of any construction under the Franchise, but in any case within six months after the Effective Date of this Agreement, the Grantee shall update its Construction Procedures Manual (the "Manual"), addressing matters including but not limited to changes in technology and construction, maintenance procedures, and acceptance practices and procedures for cutover to any new portions of Grantee's Cable System. The updated Manual shall include, without limitation, procedures for building aerial and underground plant and the acceptance criteria for the HSN and the I-Net proposal. The Grantee shall provide the County with a copy of the updated Manual forty-five days before beginning construction. Grantee shall

also provide the County with a current copy of the Manual at execution of this Agreement and shall provide the County with copies of any updates as such updates are added to the Manual.

(27) Except for emergency maintenance or repairs, the Grantee shall provide reasonable notice to residents in any construction area prior to first entering onto their property to perform any work in conjunction with system construction or rebuild, and shall provide reasonable notice to affected residents in advance of any work which will involve excavation, or replacement of poles. The Grantee shall provide affected residents with a local name and phone number they can call to discuss the Grantee's actions.

(c) *System Tests and Inspections.*

(1) The Grantee shall perform all tests necessary to demonstrate compliance with the requirements of the Franchise, and to ensure that the HSN system components are operating as expected. All tests shall be conducted in accordance with federal rules and any relevant edition of the National Cable Television Association's "Recommended Practices for Measurements on Cable Television Systems," or if no relevant edition exists, such other appropriate manual as the Grantee may propose and the County approve. In the event that the FCC's technical performance standards are repealed or are no longer applicable to the Grantee's Cable System, such standards shall remain in force and effect until the Communications Administrator or his designee and the Grantee agree to new standards.

(2) The Grantee shall conduct tests as follows:

(A) proof of performance tests on each newly constructed or rebuilt segment prior to Subscriber connection or activation, but not later than ninety days after any newly constructed or substantially rebuilt segment is made available for service to Subscribers;

(B) proof of performance tests on the Grantee's Cable System at least once every six months or as required by FCC rules, whichever is more often, except as federal law otherwise limits the Grantee's obligation; and

(C) special proof of performance tests of Grantee's Cable System or a segment thereof when Subscriber or User complaints indicate tests are warranted.

(3) The County may make independent performance tests of Grantee's Cable System, but shall not alter the operation of Grantee's Cable System without the Grantee's approval. The Grantee shall cooperate with the County in conducting such tests. Such independent tests shall be at the County's expense.

(4) The County shall have the right to witness and/or review all tests on newly constructed or rebuilt segments of Grantee's Cable System. The Grantee shall provide the County with at least two business days' notice of, and opportunity to observe, any tests performed on Grantee's Cable System, except in emergency situations.

(5) Tests shall be supervised by the Grantee's engineer, who shall sign all records of tests provided to the County.

(6) The County may conduct inspections of construction areas and Subscriber installations, including but not limited to inspections to assess compliance with the Grantee's construction and installation requirements. The County shall notify the Grantee of any violations found during the course of inspections, identifying the locations with particularity and stating the specific nature of the violation. The Grantee must bring violations as specified in the notice that are within Grantee's control into compliance as follows: (i) safety violations must be made safe within forty-eight hours of receiving notice of the violation; (ii) Virginia Department of

Transportation violations must be brought into compliance within five days of receiving notice of the violation; and all other violations must be brought into compliance within thirty days of receiving notice of the violation. After the specified time period, the Grantee must submit a report to the County describing the steps it has taken to bring itself into compliance. Inspection does not relieve the Grantee of its obligation to build in compliance with all provisions of the Franchise.

(7) A written report of test results under [Section 5\(c\)\(2\)](#) shall be filed with the County within seven days of each test. Such reports shall, at a minimum, contain the information specified in the Fairfax County Code.

(8) If any test under [Section 5\(c\)\(2\)](#) indicates that any part or component of Grantee's Cable System distribution network fails to meet applicable requirements, the Grantee, without requirement of additional notice or request from County, shall take corrective action, retest, advise the County of the action taken and results achieved, and supply the County with copies of the results within thirty days from the date corrective action was completed.

(d) *Publicizing Proposed Construction Work.* The Grantee shall notify the general public prior to commencing any proposed construction that will significantly disturb or disrupt public property or Public Rights-of-Way or public land or have the potential to present a danger or affect the safety of the public generally. Where possible, the Grantee shall publicize proposed construction work at least one week prior to commencement of that work by notifying those residents and others in the immediate vicinity of where work is to be done and most likely to be affected by the work in at least one of the following ways: by telephone, in person, by mail, by distribution of door hangers or flyers to residences, by publication in local newspapers, or in any

other manner reasonably calculated to provide adequate notice. Notice to affected Persons must include the name and local telephone number of a Grantee representative who is qualified to answer questions concerning proposed construction. In addition, before entering onto any Person's property for proposed construction work in connection with the rebuild for the System Upgrade of Grantee's Cable System, the Grantee shall contact the property owner or (in the case of residential property) the resident at least two days in advance, when possible.

(e) *System Maintenance.* The Grantee shall, when practicable, schedule and conduct maintenance on Grantee's Cable System so that interruption of service is minimized and occurs during periods of minimum Subscriber use of Grantee's Cable System. The Grantee shall provide reasonable prior notice to Subscribers and the County before interrupting service for planned maintenance or construction, except where such interruption is expected to be one hour or less in duration. Such notice shall be provided by methods reasonably calculated to give Subscribers actual notice of the planned interruption.

6 SYSTEM FACILITIES, EQUIPMENT AND SERVICES

(a) *System Characteristics.* The HSN generally shall have at least the following characteristics:

(1) modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise term;

(2) protection against outages due to power failures, so that back-up power is available at a minimum for at least 24 hours at each headend, four hours at each hub, and conforming to industry standards, but in no event rated for less than two hours, at each power supply site;

(3) facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design;

(4) a system that conforms to or exceeds all applicable FCC technical performance standards, as amended from time to time, and any other technical performance standards lawfully established by the County, and that substantially conforms in all material respects to applicable sections of the following standards and regulations to the extent such standards and regulations remain in effect and are consistent with accepted cable industry procedures for (i) technical standards applicable to Cable Systems or (ii) guidelines for physical plant construction and maintenance applicable to Cable Systems:

(A) Occupational Safety and Health Administration (OSHA) Safety and Health Standards;

(B) National Electrical Code;

(C) National Electrical Safety Code (NESC);

(D) National Cable Television Association Standards of Good Engineering Practices.

(E) Obstruction Marking and Lighting, AC 70/7460 i.e., Federal Aviation Administration;

(F) Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17;

(G) AT&T Manual of Construction Procedures (Blue Book);

(H) County and State Utility Construction Requirements;

(I) the Virginia Uniform Statewide Building Code;

(J) Virginia Department of Transportation rules and regulations;

(K) any common shared easement or joint trenching arrangements to which the Grantee is a party; and

(L) the Grantee's Construction Procedures Manual.

(5) facilities and equipment sufficient to cure violations of FCC technical standards and to ensure that Grantee's Cable System remains in compliance with the standards specified in [paragraph \(4\)](#);

(6) such facilities and equipment as necessary to maintain, operate, and evaluate Grantee's Cable System to comply with FCC technical standards, as such standards may be amended from time to time;

(7) status monitoring capability in new equipment obtained after the Effective Date to monitor the cable system's performance, including signal level and distortion parameters, and, among other things, alert the Grantee when and where back-up power supplies are being used, which capability shall be activated and used on or before the completion of the System Upgrade as specified in [subsections 6\(d\)](#) and [6\(f\)](#), provided that, if the Grantee can demonstrate that such activation or use would be technically or economically infeasible, the County will waive the requirement of such activation or use until it is technically and economically feasible;

(8) all facilities and equipment designed to be capable of continuous twenty-four hour daily operation in accordance with FCC standards except as caused by a *force majeure* condition;

(9) all facilities and equipment designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of off-the-air signals by a subscriber;

(10) all facilities and equipment designed, built and operated in such a manner as to protect the safety of Grantee's Cable System workers and the public;

(11) sufficient trucks, tools, testing equipment, monitoring devices and other equipment and facilities and trained and skilled personnel required to enable the Grantee to substantially comply with applicable law, including applicable customer service requirements and including requirements for responding to system outages;

(12) all facilities and equipment required to properly test the system and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems;

(13) design capable of interconnecting with other broadband communications networks (including but not limited to wireless systems) as set forth in [Section 6\(i\)](#) of this Agreement;

(14) antenna supporting structures (towers) designed in accordance with the Virginia Uniform Statewide Building Code, as amended, painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation

Administration, the Federal Communications Commission, and all other applicable codes and regulations;

(15) facilities and equipment at the headend allowing the Grantee to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted on the HSN shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning;

(16) Grantee shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Grantee's Cable Service. Such a system will at a minimum offer as an option that a Person ordering programming must provide a personal identification number provided by the Grantee only to a Subscriber. Provided, however, that the Grantee shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

(b) *Current System.* The Grantee is authorized and required to operate Grantee's Cable System as it exists on the date hereof, including without limitation the existing Institutional Network, and to provide service substantially equivalent to its existing service, within its Franchise Area as of the Effective Date of this Agreement, until such time as the HSN and Institutional Network are upgraded, as provided herein.

(c) *Integration of Advancements in Technology.* During the franchise term, the Grantee shall maintain and improve its existing facilities in accordance with accepted cable industry practices.

(d) *System Upgrade.* The Grantee shall complete a System Upgrade in accordance with the schedule set forth in [subsection 6\(f\)](#) providing at least the following characteristics:

(1) no microwave links in the distribution system from the headend, except as a backup to wireline systems;

(2) replacement of the current AML microwave link with fiber, in order to achieve reliable downstream transmission and a two-way system with acceptable noise and distortion properties;

(3) redundant routing between each hub site and headend of the upgraded Grantee's Cable System;

(4) segmentation of the system so that sufficient capacity is available for interactive services;

(5) Hybrid fiber-coaxial ("HFC") architecture, with fiber-optic cable at least to the feeder, so that no more than an average of 2,000 homes passed per dual coaxial cable are served from any fiber node (except that if Grantee uses single cable in any locations, there shall be no more than an average of 1,000 homes passed per fiber node), and with the return path activated on both cables where dual cables are used;

(6) designed and built to no more than ten coaxial amplifiers (excluding any such amplifier that serves only a single subscriber) per coaxial cable in each cascade from the node;

(7) a capacity rating of at least 550 MHz for all active components obtained on or after the Effective Date of this Agreement and at least 450 MHz for active components obtained prior to the Effective Date of this Agreement, and a rating of at least 750 MHz for all passive components obtained on or after the Effective Date;

(8) computer-controlled audio leveling equipment, capable of sampling and controlling the entire audio frequency spectrum for each channel and of sampling over time, provided that Grantee reserves the right to discontinue use of this equipment if such equipment adversely affects the operation of Grantee's Cable System.

(e) *System Design Submission Process.* At least two weeks prior to the date construction of any upgrade of a segment of Grantee's Cable System is scheduled to commence, the Grantee shall submit to the County a system design and construction plan for that segment, which shall be subject to change and include at least the following elements:

- (1) Design type, trunk and feeder design, and location of hubs, nodes, and amplifiers;
- (2) Distribution system equipment to be used;
- (3) Locations and design types for standby power.

The system design will be shown on construction-scale maps. To the extent that the Grantee revises its plan prior to construction, the Grantee shall submit a revised plan. The Grantee's submission of such plans and maps shall not operate to waive any rights of Grantee, and neither the County's receipt of such plans and maps and comments thereon, nor any comments it provides to the Grantee, shall operate to waive any rights of the County.

(f) HSN Upgrade Schedule

(1) Subject to the conditions set forth in [Section 6\(g\)\(2\)](#) herein, the Grantee shall begin construction of the HSN System Upgrade within one year after the Effective Date of the Franchise Agreement, and shall complete construction within forty-eight months after the Effective Date of the Franchise Agreement, in order to minimize disruption of any Public Rights-of-Way or public land. The Grantee's construction of the HSN and the I-Net shall proceed together as described in Appendix 2, and the Grantee and the County shall coordinate planning for I-Net construction pursuant to Appendix 2 hereto.

(2) The Grantee's construction plan and System Upgrade shall be developed without regard to income level of any portions of the Franchise Area.

(3) All construction shall be performed in accordance with applicable provisions of the Cable Ordinance and this Agreement, except where specifically waived in writing by the Communications Administrator or his designee.

(g) Periodic Progress Reporting.

(1) Following the commencement of construction of the System Upgrade or any similar major construction, every three months until the construction is completed, the Grantee shall meet with the County and provide an update on the progress of the System Upgrade according to the Grantee's then-current general plan, unless the County waives such meeting. Upon request, the Grantee shall provide detailed written reports to the County on the Grantee's progress in construction.

(2) Delays in the System Upgrade. The Grantee shall not be excused from the timely performance of its obligation to begin and complete any System Upgrade within the times specified herein, except for the following occurrences:

(A) Any "*force majeure*" situation, as described in [Section 12](#) herein;

(B) Failure or delay by the County, VDOT or any governmental instrumentality, agency or any utility to issue any permits or permission upon a timely request submitted by the Grantee or its contractor representative and tender (except as to a County permit) of any required permit fee;

(C) Delays beyond the control of the Grantee that the Grantee could not reasonably have anticipated regarding the availability, shipment and arrival of necessary equipment, cables, electronics or hardware, protracted underground excavation, easement availability, or any other valid factor fully explained and reasonably justified in writing to the Communications Administrator or his designee.

(h) *Leased Access Channels.* The Grantee shall provide leased access channels as required by federal law.

(i) *Interconnection.*

(1) The Grantee shall design Grantee's Cable System so that it is capable of interconnecting with other broadband communications networks (including but not limited to wireless systems) at suitable locations as determined by the Grantee. Interconnection capabilities shall be provided for the exchange of all PEG signals designated in [Section 7](#) herein carried on the HSN. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods.

(2) At the request of the Communications Administrator, the Grantee shall, to the extent permitted by applicable law and its contractual obligations to third parties, use every reasonable effort to negotiate an interconnection agreement with any other franchised Cable System in Fairfax County for the PEG channels on the HSN. Grantee will continue to interconnect with the Cable System in the Reston franchise area.

(3) Grantee will continue to interconnect the I-Net with the institutional network of the franchised Cable System in the Reston franchise area as long as there is such a Reston institutional network. Any County I-Net connections to other broadband networks will be the County's sole responsibility and done at the County's expense, but the Grantee will assist in any such effort as reasonably requested.

(4) The Grantee shall notify the County prior to any interconnection of Grantee's Cable System with other broadband communications networks.

(5) The Grantee shall in good faith cooperate with the County in implementing interconnection of PEG Cable Service with communications systems beyond the boundaries of the County.

(j) Emergency Alert System.

(1) The Grantee shall install and thereafter maintain for use by the County an Emergency Alert System ("EAS").

(2) This EAS shall at all times be operated in compliance with FCC requirements. Subject to the foregoing, the EAS shall be remotely activated by telephone and shall allow a representative of the County to override the audio and video on all channels on the Grantee's Cable System that may lawfully be overridden (subject to any contractual or other

rights of local broadcasters) without the assistance of the Grantee, for emergency broadcasts from a location designated by the County in the event of a civil emergency or for reasonable tests.

(3) The County will provide reasonable notice to the Grantee prior to any test use of the EAS. The Grantee shall cooperate with the County in any such test to the maximum extent feasible.

(k) *Uses of System.* Grantee will notify the County of all active uses of the Grantee's Cable System as promptly as possible after the institution of such uses.

(l) *Home Wiring.* Grantee shall comply with all applicable FCC requirements, including any notice requirements, with respect to home wiring. Prior to a customer's termination of Cable Service, the Grantee will not restrict the ability of a Subscriber to remove, replace, rearrange or maintain any cable wiring located within the interior space of the Subscriber's dwelling unit, so long as such actions are consistent with FCC standards. The Grantee may require a reasonable indemnity and release of liability in favor of the Grantee from a Subscriber for wiring that is installed by such Subscriber.

(m) *Antenna Towers*

(1) The Grantee may continue to maintain, repair and use antennas and antenna towers at certain sites belonging to the County, pursuant to the terms of the agreements under which the Grantee leases such sites from the County, including any payments to the County and any extensions of the lease term specified in such agreements, as long as the Grantee continues to use such sites for delivery of Cable Service, including the normal or backup microwave distribution of programming to hubs and/or mobile radio used by the Grantee's

employees or subcontractors on business related to Grantee's Cable System. Such existing leases for such towers shall be extended through the term of this Agreement. Compensation received by the County for such antenna leases shall not be considered a franchise fee.

(2) To the extent that the Grantee uses such antenna towers on County sites for commercial purposes not directly related to Grantee's Cable System or the provision of Cable Service, such towers and the Grantee's use and occupancy of such towers shall be subject to all County policies, laws and regulations in effect from time to time relating to such towers, including any compensation and collocation requirements; provided, however, that the County shall not be due any compensation with respect to existing tenants of the Grantee on antenna towers on County sites as of the Effective Date, and provided further that any collocation requirements shall not interfere with the rights of such existing tenants.

(n) *Periodic Performance Evaluation.* The County may schedule periodic review sessions to evaluate the performance of the Grantee. The Grantee shall cooperate with the County in any such evaluation to the maximum extent feasible.

(o) *Tenth-Year Anniversary Review.*

(1) The provisions of this [Section 6\(o\)](#) shall not apply if, at the time of the review as specified in [Section 6\(o\)\(3\)](#) or at any time subsequent to such review, the Grantee is subject to effective competition as defined in 47 U.S.C. § 543(l).

(2) As used in this [Section 6\(o\)](#), the term Economically and Technically Feasible and Viable shall mean Cable Services capable of being provided: (i) through technology which has been demonstrated in actual applications (not simply through tests or experiments) to operate in a workable manner; and (ii) in a manner which has a reasonable likelihood of

generating acceptable returns on investment for the Grantee's Cable System over the remaining term of the Franchise that are at a rate that is in no event less than the overall rate of return then earned by Grantee's Cable System.

(3) To the extent authorized pursuant to this [Section 6\(o\)](#), the County may conduct a service review (the "Review") that shall commence not earlier than the 10th anniversary of the Effective Date of this Franchise Agreement. The sole purpose of such Review shall be to ascertain whether the Cable Services offered by Grantee or proposed to be offered by Grantee during the remaining term of the Franchise conform with Cable Services generally available on Cable Systems in communities substantially similar to the County.

(4) The Review conducted by the County pursuant to this section shall be confined solely to a review of the Cable Services generally available in substantially similar communities on the home subscriber network of the Cable Systems of such communities. Based upon the County's evaluation of cable related needs and interests of Fairfax County residents and the County's assessment that it is Economically and Technically Feasible and Viable for the Grantee to satisfy such needs and interests, the County shall issue a determination specifying with particularity (i) the Cable Services that Grantee is not then providing or has not proposed to provide within a reasonable time frame, and (ii) the basis for the County's determination that it is Economically and Technically Feasible and Viable for the Grantee to provide the Cable Services specified. Grantee shall reasonably cooperate with the County in conducting the Review.

(5) Upon receipt of the County's written report of its initial determinations, Grantee shall submit a response within 120 days. Such response shall identify which Cable Services specified in the County's initial review report are Economically and Technically

Feasible and Viable for Grantee to provide, including any changes in technology that Grantee deems necessary to support such Cable Services and any plans or timetables for the implementation of any such Cable Services. Such response shall further identify any Cable Services specified in the County's report that Grantee determines are not Economically and Technically Feasible and Viable for Grantee to provide.

(6) To the extent that Grantee and County are in agreement with respect to all of the Cable Services specified in the County's report on its initial determinations, the Grantee and County shall amend this Franchise Agreement as required to reflect the provision of such Cable Services.

(7) If, after receiving Grantee's response, the County determines to seek amendment to the Franchise to encompass one or more Cable Services that Grantee determines are not Economically and Technically Feasible and Viable for Grantee to provide, the County shall commence an administrative proceeding to determine whether the Cable Services which the County desires the Grantee to provide, but the Grantee is not willing to provide as requested, are in fact necessary to meet the cable-related needs and interests of the County's residents and are Economically and Technically Feasible and Viable for the Grantee to provide.

(8) Any such proceeding shall be public, shall be conducted upon adequate notice to Grantee, and the Grantee and the County shall be afforded fair opportunity for full participation, including the right to introduce evidence (including evidence related to issues of cable-related needs and interests of the County's resident and whether the Cable Services requested are Economically and Technically Feasible and Viable), to require the production of evidence, and to question witnesses. A transcript shall be made of the proceeding.

(9) At the completion of the proceeding, the County shall issue a written order (the “Review Assessment Order”) specifying (i) each additional Cable Service that the County deems appropriate to meet the cable related needs and interests of Fairfax County residents, (ii) the reasons why the provision of each Cable Service specified in (i) is Economically and Technically Feasible and Viable, and (iii) the extent to which each such Cable Services is being provided by any other multi-channel video programming distributor then serving subscribers in the County. Such written order shall be based upon the record of the administrative proceeding and shall state the reasons for its decision.

(10) Upon receipt of the County’s Review Assessment Order, Grantee shall have the following options: (i) Grantee may agree to comply with the Review Assessment Order, in which event the parties shall amend this Franchise Agreement accordingly; (ii) Grantee may accept such Review Assessment Order under protest and seek relief from all or any part of such Review Assessment Order pursuant to 47 U.S.C. § 545(b), and in that event, any timetables or construction schedules specified in the Review Assessment Order shall be deemed tolled until the issuance of a determination on the merits of a petition filed by Grantee pursuant to Section 545(b) by the Court of original jurisdiction and any appeals taken therefrom; or (iii) if, after the passage of 120 days after its receipt of the Review Assessment Order, Grantee has not exercised either option (i) or (ii) above, then the County may notify the Grantee that the County wishes to commence proceedings to renew the Franchise, and such action shall be deemed to be a request by the Grantee to commence renewal proceedings pursuant to 47 U.S.C. § 546, in which event the Franchise term will be deemed to expire 36 months from the date of such notice.

(11) If Grantee accepts the Review Assessment Order or otherwise agrees to provide additional Cable Services, the term of this Franchise Agreement shall be extended for such additional period of years (commencing with the normal expiration date of this Franchise Agreement) as the parties shall mutually agree, but in no event less than five years.

7 CHANNELS AND FACILITIES FOR PUBLIC, EDUCATIONAL AND GOVERNMENTAL USE

(a) Access Channels

(1) Grantee will provide the County with up to eighteen PEG channels in the aggregate, though Grantee reserves the right to utilize for its own purposes any portion of such channels not utilized for PEG purposes.

(2) The Grantee shall make available to all Subscribers residing within Fairfax County in those areas where Grantee has authority to provide service at least the following video Channels for public, educational and governmental use, which Channels shall be in addition to any capacity provided on the Institutional Network pursuant to [Section 7\(k\)](#):

- (A) Public access: 4
- (B) Fairfax County Public Schools: 3
- (C) George Mason University: 1
- (D) Northern Virginia Community College: 1
- (E) University of Virginia and/or Virginia Polytechnic Institute: 1
- (F) Shared channel for institutions of higher education: 1

(G) County governmental access: 3 County governmental access channels shall be allocated to specific uses or agencies by the County.

(H) Reserved for educational and/or governmental access use as allocated by County: 4. The County shall not implement its use of three of these four Channels until the County has switched over the Fairfax Training Network to the I-Net as provided in Appendix 2.

(3) The Grantee shall have an obligation to provide playback, training, outreach, administrative support and production assistance to public access Users, which obligation shall be discharged so long as (A) a valid and binding contract is maintained for the provision of such services with the Fairfax Cable Access Corporation, (B) a valid and binding contract for the provision of such services is maintained with some other public access management corporation, (C) rights over such public access management are undertaken pursuant to the provisions of [Section 7\(a\)\(4\)](#) and the Grantee provides the Public Access Grant (as hereinafter defined), together with any interest the Grantee may have or obtain in any existing assets of the public access management corporation that were purchased with funds provided by the Public Access Grant, to such management organization or to the County pursuant to [Section 7\(i\)\(1\)](#) herein, or (D) any other means, in the sole discretion of the County, that fulfills this obligation.

(4) If the County, in its sole discretion, finds unsatisfactory a contract for access services entered into pursuant to the preceding subsection (3), or the performance under such a contract, then the County may, in its sole discretion, undertake such management itself and the Grantee's obligations pursuant to [Section 7\(a\)\(3\)](#) shall be entirely discharged by

providing the Public Access Grant, together with any interest the Grantee may have or obtain in any existing assets of the public access management corporation that were purchased with funds provided by the Public Access Grant, directly to the County, which may in turn reassign such Public Access Grant such assets, and any other assets that the County may otherwise acquire from any such public access management corporation, to any third-party manager at the County's discretion.

(5) Except as provided in [Section 7\(e\)\(3\)](#), each PEG Channel shall be transmitted on the HSN in standard 6 MHz, unscrambled NTSC format so that every Subscriber can receive and display the PEG signals using the same converters and signal equipment that is used for other Basic Service Channels.

(6) If the Grantee makes changes to Grantee's Cable System that require improvements to access facilities and equipment, Grantee shall provide any necessary additional headend and distribution facilities or equipment within thirty days so that PEG facilities and equipment may be used as intended with respect to the up to eighteen PEG channels specified in [Section 7\(a\)\(2\)](#) and any channels reserved by PEG Users pursuant to [Section 7\(e\)\(3\)](#), including, among other things, so that live and taped programming can be cablecast efficiently to Subscribers.

(b) Access Channel Assignment

(1) Each PEG Channel shall be delivered over the HSN with transmission quality the same as or better than the transmission quality of any other Channel on Basic Cable Service.

(2) The Grantee shall not arbitrarily or capriciously change access channel assignments, and the Grantee shall seek to minimize the number of such changes; provided, however, that the Grantee may change access channel assignments as it deems appropriate so long as (i) the Grantee gives the access channel programmer ninety days' notice of such change, and (ii) the Grantee provides, free of charge, public announcements of such changes that shall include (A) to the extent Grantee has advertising availability, advertising such PEG channel changes on advertising inserts on local channels carrying non-satellite programming for up to two minutes per day in prime time on such local channels for the thirty days prior to such change, and (B) providing prominent notice of such changes in at least two issues of Grantee's monthly cable guide magazine prior to such change.

(c) Capital Grants for Access Facilities

(1) The Grantee shall provide capital grants in amounts in the aggregate totaling 3% for each quarter of the amount that results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the County for that quarter (collectively, the "Total Grants").

(2) The Total Grants shall be paid to the County on a quarterly basis with such payments being made no later than thirty days following the end of each quarter.

(3) If the Grantee and the County disagree at any time as to the amounts due under this subsection (c), the Grantee shall continue paying the specified grants in the amounts paid in the last undisputed payment during the period of any such dispute, provided, however, that the County shall return any such amounts paid to the County that are later determined to be in excess of the correct amounts.

(d) *Return Feed From Facilities*

(1) The Grantee shall provide without charge transmission by means of dedicated, fully fiber optic links between the headend and the PEG access origination sites specified in Appendix 3 (the "PEG Origination Site Appendix") so that signals can be generated at these sites and routed onto an appropriate access channel. Such upstream transmission shall be in addition to any required capacity on the HSN and shall not be part of the I-Net specified in [Section 7\(k\)](#), although the fiber links may at the Grantee's option be emplaced together with those carrying the I-Net. Such upstream transmission provided by the Grantee shall include all equipment necessary for amplification, optical conversion, receiving, transmitting, switching, and headend processing of upstream PEG signals from the studio at each PEG origination site, and all such equipment, including but not limited to the fiber electronics at the PEG studio, shall be installed, repaired, and maintained in good working order by the Grantee on Grantee's side of the Demarcation Point, provided, however, that the Grantee shall not be responsible for the cost of repairing any damage caused by the operator of the PEG studio or its agents or invitees, and that the Grantee's obligation with respect to such upstream transmission shall be dependent on the operator of the PEG origination site's providing Grantee, without charge, with such space, electrical power supply, access, and other facilities and cooperation as shall be necessary to allow the Grantee to fulfill its duties under this Agreement with respect to such upstream transmission. The dedicated channels may be multiplexed into backbone fiber rings at the hub or node nearest to the origination site for return to the headend. The initial operation dates of the dedicated fiber optic links will be determined by Grantee based on where each site is located in

Grantee's construction plan, but in any case shall be no later than the completion date stated in [Section 6\(f\)](#).

(2) Grantee must provide equipment with baseband video and balanced stereo inputs at each PEG origination studio and a means by which the channel manager at the PEG origination studio may remotely route signals from that studio onto the correct HSN PEG Channels.

(3) The Grantee shall transmit the upstream feeds from the Demarcation Point to the headend in such a manner as to comply with FCC technical standards and with applicable EIA RS-250B performance standards for medium-haul video.

(e) Use of PEG Channels, Facilities and Equipment

(1) The County, or the entity that manages a PEG Channel, shall be able to establish and enforce rules and procedures for use of the PEG Channels pursuant to Section 611(d) of the Cable Act, 47 U.S.C. § 531(d). The County shall resolve any disputes among PEG users regarding allocation of PEG Channels.

(2) The Grantee will provide headend and distribution facilities for downstream transmission of the PEG Channels on the HSN, with respect to the up to eighteen PEG channels specified in [Section 7\(a\)](#), at no charge to the County or other PEG access programmers.

(3) If capacity dedicated for PEG use pursuant to [Section 7\(a\)](#) of this Agreement is subdivided or compressed resulting in multiple transmission paths, the Grantee may retain for its own use: (i) 100% of the additional capacity on Channels dedicated to public access use prior to such subdivision or compression; (ii) 50% of the additional capacity on

Channels dedicated to educational or governmental access use prior to such subdivision or compression; provided, however, that any additional capacity reserved for use by educational and governmental PEG Users pursuant to this subsection that is not activated by such entities within twelve months of the date on which the Grantee notifies the County of such subdivision or compression may be used by Grantee until twelve months after notice from the County or such educational Users of intent to activate such reserved capacity, provided, however, that such notice shall be effective only if the County or such educational Users subsequently actually use such capacity. For purposes this subsection, the capacity dedicated to a PEG channel prior to such subdivision or compression refers to a 6 MHz channel.

(4) The County or its licensees, assigns, or agents shall not transmit on public, educational or governmental access channels commercial programming or commercial advertisements to the extent that they would constitute competition with the Grantee for such commercial programming or commercial advertisements, subject to the following:

(A) For purposes of this subsection, "commercial programming or commercial advertisements" shall mean programming or advertisements for which the County receives payment from a third party (a party other than the County or the Grantee), but shall not include announcements indicating that programming is underwritten by a commercial entity, such as the underwriting announcements typically displayed by the Public Broadcasting System.

(B) For purposes of this subsection, "the County" shall be deemed to include the Fairfax County Public Schools.

(f) *Cable Drops and Outlets for Government Facilities.*

(1) The Grantee will provide the following, at no charge, at each fire station, public school, police station, public library, and such buildings used for public purposes as may be designated by the County; provided, however, that if it is necessary to extend a Grantee's trunk or feeder lines more than three hundred feet solely to provide service to any such school or public building, the County shall have the option of paying the Grantee's direct costs for such extension in excess of three hundred feet itself, or of releasing the Grantee from or postponing the Grantee's obligation to provide service to such building:

(A) the first service drop of the HSN, for each such site where a drop is not already installed;

(B) one HSN Subscriber converter per site, provided that the Grantee and the entity operating the site shall each pay half of the actual cost of all new digital converters that replace any converters existing at such site on the Effective Date, such replacement to occur when the Grantee first begins to transmit a regularly scheduled channel on either the Basic Service or a cable programming service tier in a form other than 6 MHz NTSC; and

(C) Basic Service and Cable Programming Service.

(2) Grantee shall deliver all HSN signals to each such HSN drop in buildings to which service is provided on the Effective Date at the same power level provided there on the Effective Date or better. Grantee shall deliver all HSN signals to each such HSN drop in buildings to which service is provided after the Effective Date at 15 dBmV or better, measured at the Demarcation Point, for each building at which the County advises the Grantee it will use two or more converters.

(3) The County shall be responsible for the cost of any “terminal equipment,” including TV monitors, VCRs, and/or computers.

(4) The cost of inside wiring, additional drops or outlets and additional converters requested by the County within these specified facilities, including those drops or outlets in excess of those currently installed, are the responsibility of the County. If the County requests the Grantee to provide such services or equipment, the County will pay the Grantee for those costs in accordance with the cable cost of service standards established by the FCC as such standards are in effect as of the Effective Date.

(5) If the County makes a request to the Grantee in writing, the Grantee shall rewire buildings, move drops or entrance links, and make other changes to installations of inside wiring. The County will be responsible for the cost of all such work, and the County will pay the Grantee for these costs in accordance with the cable cost of service standards established by the FCC as such standards are in effect as of the Effective Date, subject to any applicable Universal Service discount.

(6) Subject to the limitations set forth in this [subsection 7\(f\)](#), whenever necessary, or dictated by changes in the Grantee’s technology, the Grantee shall upgrade all equipment provided at Grantee’s expense pursuant to this [subsection 7\(f\)](#), in order to ensure that the County can continue to receive the services offered by the Grantee to the County pursuant to this Franchise Agreement.

(g) *Backup Facilities and Equipment.* Grantee shall design, build, and maintain PEG upstream feeds so that such feeds function as reliably as Grantee’s Cable System as a whole, and are no more likely to fail than is Grantee’s Cable System to fail as a whole.

(h) *Editorial Control.* Except as expressly permitted by federal law, the Grantee shall not exercise any editorial control over the content of programming on the Public, Educational and Governmental Access Channels (except for such programming as the Grantee may cablecast on such Channels).

(i) *Payments by Grantee to PEG Users.*

(1) The Grantee shall provide payments to PEG Users, that shall be subtracted from the amount otherwise payable to the County by the Grantee in accordance with [Section 7\(c\)](#) and [Section 8\(a\)](#), in amounts in the aggregate totaling 0.96% for each quarter of the amount that results from subtracting from Gross Revenues for that quarter the Franchise Fees paid to the County for that quarter ("Gross Revenues Less Franchise Fees") of which 0.8% shall be provided for public access as set forth in [Section 7\(a\)\(3\)](#) and [\(4\)](#) (the "Public Access Grant") and 0.16% of which shall be for higher education uses ("Higher Education Grants") The grants provided herein shall be in partial satisfaction of the amounts otherwise payable to the County in accordance with [Section 7\(c\)](#) and [Section 8\(a\)](#).

(2) The Public Access Grant and the Higher Education Grants shall be paid on a quarterly basis with such payments being made no later than thirty days following the end of each quarter, as follows:

(A) Paid to George Mason University: 0.08 percent of Gross Revenues Less Franchise Fees;

(B) Paid to Northern Virginia Community College: 0.08 percent of Gross Revenues Less Franchise Fees;

(C) Paid as set forth in [Section 7\(a\)\(3\)](#) and [\(4\)](#): 0.8 percent of Gross Revenues Less Franchise Fees.

(j) *Carriage of PEG Programming.* All PEG programming shall be carried on the Grantee's Basic Service tier, except as otherwise agreed upon.

(k) *Institutional Network*

(1) The Grantee shall construct the I-Net System Upgrade to be paid for by the County, linking public, educational and governmental facilities in the County (the "Institutional Network" or "Network" or "I-Net"), in accordance with the conditions set forth in Appendix 2 and this Franchise Agreement.

(2) The Grantee shall assist the County in the County's migration of the Fairfax Training Network ("FTN") as part of the I-Net System Upgrade as reflected in Appendix 2.

(3) The Grantee shall continue to maintain and operate the existing Institutional Network and the FTN as they exist as of the Effective Date of this Agreement, pursuant to the terms of the Prior Franchises and the parties' prior correspondence regarding the FTN (Letter from Thomas G. Robinson to Thomas Waldrop dated April 14, 1988; Letter from Thomas E. Waldrop to Thomas G. Robinson dated April 21, 1988), until the County switches all its current institutional network and FTN operations to the I-Net pursuant to Appendix 2. The County shall switch such operations to the I-Net pursuant to Appendix 2 by two years after the completion of construction of the I-Net System Upgrade. After the County has switched such operations, the Grantee shall not use the former I-Net except as authorized by this Agreement or pursuant to applicable law.

(l) *Costs and Payments Not Franchise Fees.* Grantee waives any claims that any costs to the Grantee associated with the provision of support for PEG access (including the I-Net) pursuant to this Franchise Agreement, including but not limited to the Total Grants, constitute franchise fee payments within the meaning of 47 U.S.C. § 542.

8 FRANCHISE FEE

(a) *Payment to County.* Each year during the Franchise term, as compensation for use of Public Rights-of-Way and public land, the Grantee shall pay to the County, on a quarterly basis, a Franchise Fee of five percent of Gross Revenues. Such payments shall be made no later than thirty days following the end of each quarter.

(b) *Supporting Information.* Each Franchise Fee payment shall be submitted with supporting detail and a statement certified by the Grantee's chief financial officer or an independent certified public accountant, reflecting the total amount of monthly Gross Revenues for the payment period. The County shall have the right to reasonably require further supporting information.

(c) *Late Payments.* In the event any Franchise Fee payment due and owing is not made on or before the required date, the Grantee shall pay any applicable penalties and interest charges computed from such due date, as provided for in the Cable Ordinance.

(d) *Audit.*

(1) The County shall have the right to inspect books and records and to audit and recompute any amounts determined to be payable under this Agreement, whether the records are held by the Grantee, an Affiliate, or any other agent of Grantee.

(2) The Grantee shall be responsible for making available to the County all records necessary to confirm the accurate payment of Franchise fees, without regard to by whom they are held. Such records shall be made available pursuant to the requirements of [Sections 9\(a\) and 9\(g\)](#) herein. The Grantee shall maintain such records in accordance with its normal record retention policy, which the Grantee shall provide to the County upon execution of this Agreement and shall update whenever Grantee changes that policy over the course of the Franchise term.

(3) The County's audit expenses shall be borne by the County unless the audit discloses an underpayment of more than three percent of any quarterly payment, in which case the County's out-of-pocket costs of the audit shall be borne by the Grantee as a cost incidental to the enforcement of the Franchise. Any additional undisputed amounts due to the County as a result of the audit shall be paid within thirty days following written notice to the Grantee by the County of the underpayment, which notice shall include a copy of the audit report. If recomputation results in additional revenue to be paid to the County, interest will be due pursuant to [Section 8\(c\)](#).

(4) The County shall have three years from the time the Grantee delivers a Franchise Fee payment to question that payment, and if the County fails to question the payment within that time period, the County shall be barred from questioning it after that time period. If the County gives written notice to the Grantee within that three-year period, the three-year period

shall be tolled for one year to allow the County to conduct an audit. Any legal action by either party relating to a Franchise Fee payment will toll the remaining term, if any, of the three-year time period and the one-year audit period with respect to that payment.

(e) No Limitation on Taxing Authority.

(1) Nothing in this Agreement shall be construed to limit any authority of the County to impose any tax, fee, or assessment of general applicability.

(2) The Franchise Fee payments required by this section shall be in addition to any and all taxes of a general nature or other fees or charges which the Grantee shall be required to pay to the County or to any state or federal agency or authority, as required herein or by law, all of which shall be separate and distinct obligations of the Grantee. The Grantee shall not have or make any claim for any deduction or other credit of all or any part of the amount of said Franchise Fee payments from or against any of said County taxes or other fees or charges which the Grantee is required to pay to the County, except as required by law or provided for in this Franchise Agreement. The Grantee shall not apply nor seek to apply all or any part of the amount of said Franchise Fee payments as a deduction or other credit from or against any of said County taxes or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Grantee. Nor shall the Grantee apply or seek to apply all or any part of the amount of any of said taxes or other fees or charges as a deduction or other credit from or against any of its Franchise obligations, each of which shall be deemed to be separate and distinct obligations of the Grantee. Notwithstanding the above provisions of this paragraph, however, the Grantee shall have the right to a credit, in the amount of its Franchise Fee and Total Grants payments under this Agreement, against any general utility tax on Cable Services that may be imposed by

the County, to the extent such a tax is applicable to the Grantee or its subscribers. The Grantee may designate Franchise Fee(s) as a separate item in any bill to a Subscriber of the Grantee's Cable System, but shall not designate or characterize it as a tax.

(f) *No Accord and Satisfaction.* The acceptance of any payment required hereunder by the County shall not be construed as an acknowledgment or an accord and satisfaction that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release or waiver of any claim which the County may have for additional sums due and payable. However, the County's acceptance of full payment of the amount determined to be due by the County through an audit shall be construed as an accord and satisfaction.

(g) *Acceptance Fee.* As additional consideration supporting this Agreement, the Grantee shall pay to the County, at the time of tendering this Agreement, an acceptance fee of seventy-five thousand dollars (\$75,000) for each of the North and South County franchises for a total payment of \$150,000.

9 REPORTS AND RECORDS

(a) *Books and Records.*

(1) Subject to applicable law, the County shall have the right to inspect and copy at any time during normal business hours at the Grantee's office, or at another mutually agreed location, all books and records, including all documents in whatever form maintained, including electronic media ("books and records") to the extent that such books and records relate to Grantee's Cable System or to the Grantee's provision of Cable Service. The County shall take

reasonable steps to protect the proprietary and confidential nature of any such documents to the extent they are designated as such by the Grantee. The County shall have the right to copy any such books and records, except to the extent that such books and records are proprietary and/or confidential pursuant to the Virginia Uniform Trade Secrets Act or other applicable law.

(2) The Grantee shall keep complete and accurate books of account and records of its business and operations under and in connection with this Franchise Agreement.

(b) Communication with Regulatory Agencies

(1) The Grantee shall file with the County a copy of certain communications with regulatory agencies, as follows:

(A) any document (other than routine, publicly available agency mailings or publications) the Grantee files with or receives from the FCC, the Securities and Exchange Commission, or the Virginia State Corporation Commission, or any successor agency of any of these agencies, within five (5) working days of such filing or receipt;

(B) any document the Grantee files with or receives from other agencies, upon the County's request;

(C) any document that any parent of the Grantee files with or receives from any agency that directly and materially relates to the Grantee's Cable System and/or the provision of Cable Services under this Agreement, within five (5) working days of such filing or receipt.

(2) For purposes of this [subsection 9\(b\)](#), documents filed by the Grantee or a parent shall include all documents filed by or on behalf of the Grantee or its parent, but shall not include documents filed by trade associations to which the Grantee or its parent may belong

unless the Grantee or a parent has authorized the use of its name by such trade association among the filing parties and its name is used.

(3) To the extent that such documents contain, to the satisfaction of the Communications Administrator, the information required by other reports hereunder, the Communications Administrator may suspend the requirement to file such other reports with the County so as to avoid duplication and the administrative costs attendant thereto.

(c) *Annual Report.* Unless this requirement is waived in whole or in part by the County, no later than April 30th of each year during the term of this Agreement, the Grantee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

(1) a summary of the previous calendar year's activities in development of Grantee's Cable System, including but not limited to descriptions of services begun or dropped;

(2) a summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions, as such records are kept by the Grantee. Where the Grantee has identified recurrent Cable System problems, the nature of any such problems and the corrective measures taken or to be taken shall be identified;

(3) A copy of the Grantee's rules, regulations and policies available to Subscribers of Grantee's Cable System, including but not limited to (A) all Subscriber rates, fees and charges; (B) copies of the Grantee's contract or application forms for Cable Services; and (C) a detailed summary of the Grantee's policies concerning (i) the processing of Subscriber complaints; (ii) delinquent Subscriber disconnect and reconnect procedures; (iii) A/B switches;

(iv) Subscriber privacy and (v) any other terms and conditions adopted by the Grantee in connection with the provision of Cable Service to Subscribers;

(4) An annual financial report for the previous calendar year, certified by an independent certified public accountant, including a year-end balance sheet; an income statement showing Subscriber revenue and every material category of non-Subscriber revenue, operating expenses by category, depreciation expenses, interest expenses, and taxes paid, and a statement of sources and applications of funds;

(5) A current statement of costs of construction by component categories;

(6) A projected income statement, balance sheet, statement of sources and applications of funds and statement of projected construction for the next two years;

(7) A reconciliation between previously projected construction and/or financial estimates, as the case may be, and actual results;

(8) A list of Persons, including all entities controlling such Persons, holding three percent or more of the voting stock or interests of Grantee, or its parents, or Grantee's subsidiaries, if any;

(9) A list of officers and members of the Board of Directors of Grantee and its parents and Grantee's subsidiaries, if any, or similar officers if the Grantee is not a corporation;

(10) A copy of its annual report and those of its parents and Grantee's subsidiaries, if any; and

(11) At least annually, a detailed copy of updated maps for the I-Net depicting the location of all cable plant, showing areas served and locations of all fiber lines, trunk lines

and feeder lines in the County, and including changes in all such items for the period covered by the report.

(d) *Quarterly Report.* Unless this requirement is waived in whole or in part by the County, no later than thirty days after the end of each calendar quarter during the term of this Agreement, the Grantee shall submit a written report to the County, in a form reasonably satisfactory to the County, which shall include:

(1) A report showing the number of service calls received by type during that quarter, including any property damage to the extent such information is available to the Grantee, and any line extension requests received during that quarter, as such records are kept by the Grantee.

(2) A report showing the number of outages for that quarter, and identifying separately each planned outage of one or more nodes for more than one hour at a time, the time it occurred, its duration, and the tax map area and, when available to the Grantee, number of homes affected; and, when the Grantee can reasonably determine that at least 500 homes were affected, each unplanned outage affecting more than 500 homes for more than one hour, the time it occurred, the reason for the disruption and its causes, its estimated duration and the tax map area and, when available to the Grantee, the number of homes affected.

(3) A report showing the Grantee's performance with respect to all applicable customer service standards. The Grantee shall keep such records as are reasonably required to enable the County to determine whether the Grantee is substantially complying with all such customer service standards, and shall maintain adequate procedures to demonstrate such substantial compliance.

(e) *Special Reports.* Unless this requirement is waived in whole or in part by the County, the Grantee shall deliver the following special reports to the County:

(1) The Grantee shall submit monthly construction reports and weekly status reports to the County after the Effective Date for any construction undertaken during the term of the Franchise until such construction is complete, including any rebuild that may be specified in the Franchise Agreement. Upon completion of the System Upgrade, the Grantee shall provide the County free of charge with remote, read-only access to the Grantee's as-built system design maps (which the County may print by section, but not in their entirety), including any physical connections and software necessary to provide such access, subject to the County's signing any requisite software license agreement.

(2) The Grantee must submit a copy and full explanation of any notice of deficiency, forfeiture, or other document relating to the Grantee issued by any state or federal agency if such notice or other document would require Securities and Exchange Commission Form 8(k) disclosure or would require footnote disclosure in the annual financial statements of the Grantee or a parent. This material shall be submitted in accordance with the deadlines specified in [Section 9\(b\)\(1\)](#) herein.

(3) The Grantee must submit a copy and brief explanation of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by the Grantee or by any partnership or corporation that owns or controls the Grantee directly or indirectly. This material shall be submitted in accordance with the deadlines specified in [Section 9\(b\)\(1\)](#) herein.

(4) The Grantee shall summarize the results of any annual opinion surveys it conducts in its annual report, or, if the Grantee considers such results to be proprietary, shall make such results available at its offices for the County's review. At the County's request, the Grantee will include questions submitted by the County in the Grantee's surveys, provided that such questions would be likely to lead to statistically reliable results and can be included at a reasonable cost.

(f) *Additional Information.* The County may, upon reasonable written notice, require such additional information with respect to the reports to be submitted pursuant to this [Section 9](#) as may be reasonably necessary for the performance of any of the Communications Administrator's or any other County official's duties.

(g) *Records Required.*

(1) The Grantee shall maintain, in accordance with its normal record retention policies, those records required to support the reports required by [Sections 9\(c\)](#) through [9\(e\)](#) hereof, including but not limited to:

(A) Records of all complaints. The term "complaints" as used herein and throughout this Agreement refers to complaints recorded through Grantee's normal procedures about any aspect of Grantee's Cable System or the Grantee's operations, including, without limitation, complaints about employee courtesy. Complaints recorded may not be limited to complaints requiring an employee service call.

(B) A full and complete set of plans, records, and "as built" maps showing the exact location of all equipment of Grantee's Cable System installed or in use in the County, exclusive of Subscriber service drops.

(C) Records of outages, indicating date, duration, tax map area, and the estimated number of homes affected, type of outage, and cause.

(D) Records of service calls for repair and maintenance indicating the date and time service was required, the date and time service was scheduled (if it was scheduled), and the date and time service was provided.

(E) Records of installation/reconnection and requests for service extension, indicating date of request, and the date and time service was extended.

(2) All information, books and records that must be compiled, produced and/or maintained under this Agreement shall be retained, in any reasonable form, in accordance with the Grantee's normal record retention policies or as otherwise required by applicable law.

(h) *Waiver of Reporting Requirements.* The Communications Administrator or his designee may, at the sole discretion of the Administrator or the Administrator's designee, waive in writing the requirement of any particular report specified in this [Section 9](#).

10 INSURANCE, SURETY, AND INDEMNIFICATION

(a) *Insurance Required.*

(1) The Grantee shall maintain, and by its acceptance of the Franchise specifically agrees that it will maintain, throughout the entire length of the Franchise period, at least the following liability insurance coverage insuring the County and the Grantee: (i) commercial general liability insurance with respect to the construction, operation, and maintenance of Grantee's Cable System, and the conduct of the Grantee's business in the County,

in the minimum amounts of \$2,000,000 per occurrence; \$2,000,000 aggregate for each occurrence; and (ii) copyright infringement insurance in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of Grantee's Cable System.

(2) Such commercial general liability insurance must include coverage for all of the following: comprehensive form, premises-operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury.

(3) The County may review these amounts and shall have the right to require reasonable adjustments to them consistent with the public interest.

(4) The Grantee shall be solely responsible for the payment of premiums due for each policy of insurance required pursuant to this Agreement and the Cable Ordinance.

(b) *Endorsements.* All insurance policies and certificates maintained pursuant to this Agreement shall contain the following endorsement:

It is hereby understood and agreed that this insurance coverage may not be canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least 30 days after receipt by the County Communications Administrator, by registered mail, of a written notice of such intention to cancel or not to renew.

(c) *Qualifications of Insurers.* All insurance policies shall be with insurers qualified to do business in the Commonwealth of Virginia, with an A-1 or better rating of insurance by Best's Key Rating Guide, Property/Casualty Edition.

(d) *Policies Available for Review.*

All insurance policies shall be available for review by the County, and the Grantee shall submit to the County certificates of insurance for each policy required herein.

(e) Additional Insureds; Prior Notice of Policy Modification.

All commercial general liability insurance policies shall name the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees as additional insureds.

(f) Indemnification.

(1) The Grantee shall, at its sole cost and expense, indemnify, hold harmless, and defend the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees, against any and all claims, suits, causes of action, proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of Grantee's Cable System (to the extent that Grantee has operation or maintenance responsibilities pursuant to this Agreement or applicable law); copyright infringements or a failure by the Grantee to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by Grantee's Cable System (other than PEG content or I-Net content); the conduct of the Grantee's business in the County; or in any way arising out of the Grantee's enjoyment or exercise of the Franchise, unless such specific act or omission has been authorized by the County or is the result of any act or omission by the County or its elected and appointed officers, boards, commissions, commissioners, agents, or employees which results in personal injury or property damage. A general statement of authorization pursuant to the Cable Ordinance or this Agreement shall not be construed to be such an authorization.

(2) Specifically, the Grantee shall fully indemnify, defend, and hold harmless the County, and in its capacity as such, the elected and appointed officials, officers, agents, commissions, commissioners, boards and employees thereof, from and against any and all claims, suits, actions, liability, and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of the installation, construction, operation, or maintenance of Grantee's Cable System, including but not limited to any claim against the Grantee for invasion of the right of privacy, defamation of any Person, firm or corporation, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person, firm, or corporation. This indemnity does not apply to programming carried on any Channel set aside for PEG use, or Channels leased pursuant to 47 U.S.C. § 532, or any content on the I-Net, or to operations of the PEG Channels or the I-Net to the extent such operations are carried out by a person other than the Grantee or its agents.

(3) In the event that Grantee fails, after notice, to undertake the County's defense of any claims brought pursuant to subsections (1) and (2) above, Grantee's indemnification shall include, but is not limited to, the County's reasonable attorneys' fees incurred in defending against any such action, claim, suit, or proceeding, any interest charges arising from any action, claim, suit or proceeding arising under this Agreement or the Cable Ordinance, the County's out-of-pocket expenses, and the reasonable value of any services rendered by the County Attorney, or County staff or employees.

(4) In addition to the other insurance policies required by this Agreement, the Grantee shall obtain and keep in force and effect during the entire term of this Agreement, or any extension hereof, commercial general liability insurance coverage (owner's protection policy) in

a minimum amount of two million dollars covering bodily injury and property damage, subject to exclusions, for the benefit of the County, its elected officials, boards, commissions, commissioners, agents, employees, and officers. The Grantee has or shall deliver to the County on or before the date of execution of this Agreement an indemnification insurance policy duly executed by the officers or authorized representatives of a responsible and non-assessable insurance company, evidencing this coverage for the benefit of the County, its elected officials, agents, boards, commissions, commissioners, employees, and officers, which policy of insurance shall provide for at least 30 days' prior written notice to the County of the insurer's intention to cancel or not to renew said policy.

(g) *No Limit of Liability.* Neither the provisions of this Section nor any damages recovered by the County shall be construed to limit the liability of the Grantee or its subcontractors for damages under the Franchise Agreement or the Cable Ordinance or to excuse the faithful performance of obligations required by this Franchise Agreement, except to the extent that any monetary damages suffered by the County have been satisfied by a financial recovery under this section or other provisions of this Franchise Agreement or the Cable Ordinance.

(h) *County to Assume No Liability.* The County shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Grantee in the construction, maintenance, use, operation or condition of Grantee's Cable System, to the extent that Grantee has responsibilities for such maintenance, use, operation or condition pursuant to this Agreement or applicable law. It is a condition of this Agreement that the County

shall not and does not by reason of this Agreement assume any liability whatsoever of the Grantee for injury to Persons or damage to property.

11 PERFORMANCE GUARANTEES AND REMEDIES

(a) Performance Bond.

(1) Grantee shall obtain and maintain during the entire term of the Franchise, and any renewal or extensions thereof, except as provided in [Section 11\(a\)\(4\)](#) below, a non-cancelable performance bond in the County's favor in the amount of \$500,000, to ensure the Grantee's faithful performance of its obligations.

(2) The performance bond shall provide the following conditions:

(A) There shall be recoverable by the County from the principal and surety, any and all fines and penalties due to the County and any and all damages, losses, costs, and expenses suffered or incurred by the County resulting from the failure of the Grantee to faithfully comply with the material provisions of this Agreement, the Cable Ordinance, and other applicable law, to comply with all orders, permits and directives of any County agency or body having jurisdiction over its acts or defaults, to pay fees, penalties or liquidated damages due to the County, or to pay any claims, taxes or liens due the County. Such losses, costs and expenses shall include but not be limited to reasonable attorney's fees and other associated expenses.

(B) The total amount of the performance bond required by this Agreement shall be forfeited in favor of the County in the event:

- (i) the Grantee abandons Grantee's Cable System at any time during the term of its Franchise or any extension thereto; or
- (ii) the Grantee carries out a Transfer without the express written consent of the County as provided in [Section 3](#) of this Agreement.

(3) The performance bond shall be issued by a surety with an A-1 or better rating of insurance in Best's Key Rating Guide, Property/Casualty Edition; shall be in a form satisfactory to the County Attorney; shall be subject to the approval of the County; and shall contain the following endorsement:

This bond may not be canceled or allowed to lapse, until at least thirty days after receipt by the County, by certified mail, return receipt requested, of a written notice from the issuer of the bond of intent to cancel or not to renew.

(4) Reduction of Bond. The County may approve a reduction in the amount of the bond upon written application by the Grantee, which approval shall not be unreasonably withheld. The amount of the bond may be reduced to \$250,000.00 when the HSN System Upgrade has been extended to more than fifty percent of the occupied dwelling units within the area where service is available on the Effective Date of this Agreement, as certified by the Grantee to the County, and may be further reduced to the sum of \$50,000.00 when the HSN System Upgrade has been extended to more than ninety percent of the occupied dwelling units within that area, as certified by the Grantee to the County. Reductions granted or denied upon application by the Grantee shall be without prejudice to the Grantee's subsequent applications or to the County's right to require the full bond at any time thereafter.

(5) Right to Require Additional or Other Bonds. The County shall have the right, at any time that it reasonably deems itself insecure, to require that any bond be replaced by such other bond as the County may reasonably require, notwithstanding the fact that the County may have indicated its acceptance or approval of any bond(s) submitted with this Agreement.

(b) *Security Deposit.*

(1) In addition to the performance bond, the Grantee shall deposit with a third party agent ("Third Party Agent") a security deposit in the amount of \$50,000 (the "Security Deposit"), pursuant to a Security Deposit Agreement attached hereto as Appendix 5. This Security Deposit Agreement shall include *inter alia* the following terms and conditions:

(A) If the County notifies the Grantee of any amounts due to the County pursuant to this Agreement or applicable law, and the Grantee does not make such payment within ten business days, the County may withdraw the amount in question, with any applicable interest and penalties, from the Security Deposit by notice to the Grantee and the Third Party Agent specifying the amount and purpose of such withdrawal, and the Third Party Agent shall pay such amount to the County; provided, however, that if the Grantee files a legal action disputing the County's claim, the ten-business-day notice period shall be tolled as to that claim until the claim is resolved by order of the trial court.

(B) If at the time of a withdrawal from the Security Deposit by the County, the amount available with the Third Party Agent is insufficient to provide the total payment of the claim asserted in the County's notice of withdrawal, the balance of such claim shall not be discharged or waived, but the County may continue to assert the same as an obligation of the Grantee to the County.

(C) No later than thirty days after mailing of notification to the Grantee by certified mail, return receipt requested, of a withdrawal under the Security Deposit, the Grantee shall restore the amount of the Security Deposit to \$50,000.

(D) Upon termination of the Franchise, any balance then remaining in the Security Deposit shall be returned to the Grantee by the Third Party Agent within ninety days of such termination, provided that there is then no outstanding default on the part of the Grantee.

(E) Any interest accruing to the Security Deposit while it is being held by the Third Party Agent shall be for the benefit of the Grantee, and shall be paid by the Third Party Agent to the Grantee on a regular basis, and any amount in excess of \$50,000 may be withdrawn by the Grantee.

(c) *Rights Cumulative.* The rights reserved to the County in this [Section 11](#) are in addition to all other rights of the County, whether reserved herein or authorized by applicable law, and no action, proceeding or exercise of a right with respect to a performance bond or the Security Deposit shall affect any other right the County may have. Neither the making of the Security Deposit, nor the receipt of any damages recovered by the County thereunder, shall be construed to excuse the faithful performance by the Grantee or limit the liability of the Grantee under the terms of its Franchise for damages, either to the full amount of the Security Deposit or otherwise; provided, however, that the amount of any damages recovered by the County through the Security Deposit shall be offset against any damages otherwise recoverable by the County.

(d) *Remedies.* In addition to any other remedies available at law or equity, the County may revoke the Franchise for a material violation as set forth in [Section 12\(1\)\(2\)](#) of this Agreement pursuant to the procedures specified in this Agreement.

(e) *Liquidated Damages.* Because the Grantee's failure to comply with provisions of the Franchise and this Franchise Agreement will result in injury to the County, and because it will be difficult to estimate the extent of such injury, the County and the Grantee agree to the following liquidated damages to be effective during the term of the Franchise for the following violations of the Franchise and of this Agreement, which represent both parties' best estimate of the damages resulting from the specified violation. Such damages shall not be a substitute for actual performance by the Grantee of a financial payment, but shall be in addition to any such actual performance. The Communications Administrator, or designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause. Cure periods listed below shall begin to run at the time the Grantee is notified in writing of a violation by the County, unless otherwise specified below.

(1) For failure to comply with the design submission process specified in [Section 6\(e\)](#): \$400/day for each violation for each day the violation continues after a seven-day cure period;

(2) For failure by the Grantee to substantially comply with the upgrade schedule specified in [Section 6\(f\)](#): \$2,000/day for each violation for each day the violation continues after a thirty-day cure period, if the Grantee has not undertaken substantial corrective action to cure the violation within that thirty-day period;

(3) For a Transfer without approval as specified in [Section 3](#): \$2,000/day for each violation for each day the violation continues;

(4) For failure to substantially comply with requirements for public, educational and governmental use of the System pursuant to [Sections 7\(a\)\(1\), \(2\), or \(6\), 7\(b\),](#)

7(d), 7(e)(2), 7(f), 7(g), or 7(h): \$1,000/day for each violation for each day the violation continues after a fourteen-day cure period, if the Grantee has not undertaken substantial corrective action to cure the violation within that fourteen-day period;

(5) For failure to provide to the County information, reports, or filings lawfully required under the Franchise Agreement or applicable law or by the County: \$200/day for each violation for each day the violation continues after a thirty-day cure period, which shall begin to run on the due date of any regularly scheduled report and on the date of a deadline reasonably set by the County for any report or information request not regularly scheduled, unless the Grantee shows that it was not in fact aware of the requirement in question, in which case the thirty-day cure period shall begin to run upon written notice of such requirement by the County to the Grantee;

(6) Customer Service Standards:

(A) For each day during which the County determines that the Grantee has violated each of the following types of customer service standards according to the terms in which such standards are established in governing law or regulations: \$200 per violation:

- (i) failure to maintain office hours;
- (ii) failure to keep an appointment with a subscriber, or to offer a subscriber the prescribed compensation for a missed or late appointment, provided that in this case the liquidated damages shall be offset by the amount directly refunded to the subscriber by the Grantee for such appointment;
- (iii) failure to extend service to a subscriber;

- (iv) failure to arrange for converter transportation for a mobility-limited subscriber;
- (v) failure to acknowledge a service request in timely fashion;
- (vi) failure to complete repairs or maintenance;
- (vii) failure to provide required information to a subscriber or to the County;
- (viii) failure to disclose price terms to a subscriber;
- (ix) failure to maintain the public file;
- (x) improper charge of a late fee to a subscriber;
- (xi) failure to respond to a subscriber complaint in timely fashion.

(B) A separate violation under subsection (A) shall be deemed to occur whenever the County reasonably determines that one of the above separately enumerated transgressions has occurred on one day. Thus, for example, if the Grantee fails to extend service to one subscriber for two days pursuant to governing law or regulation, there would be two violations; if the Grantee fails to keep an appointment pursuant to governing law or regulation with one subscriber on one day and on that same day, independent of the missed appointment, the Grantee fails to disclose price terms to that same subscriber, then there would be two violations. However, the Grantee shall not be charged with multiple violations for a single act or event affecting a single subscriber or for a single act or event affecting multiple subscribers on the same day.

(C) Each violation under [subsection 11\(e\)\(6\)\(A\)](#), except for violations under [subsections 11\(e\)\(6\)\(A\)\(i\)](#) and [11\(e\)\(6\)\(A\)\(ix\)](#), shall be subject to a ten-day cure period which shall begin to run upon notice by the County to the Grantee of such a violation. Grantee shall be deemed to cure such a violation if it provides appropriate compensation, as agreed to by the County and the Grantee, to all affected Subscribers as to which the County has given such notice.

(D) For failure to meet customer service standards with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in governing law or regulations in any quarter, \$200 for each day during that quarter on which such standards were not met;

(7) For failure to pay any Franchise fees pursuant to [Section 8](#) or Total Grants pursuant to [Section 7\(c\)](#): \$100 per day after a seven-day cure period;

(8) For failure to file, obtain or maintain the required performance bond pursuant to [Section 11\(a\)](#) in a timely fashion: \$200 per day;

(9) For failure to bring into compliance any violation of construction standards within the appropriate time periods as specified in [Section 5\(c\)\(6\)](#) of this Agreement: \$200 per violation; and

(10) For violation of technical standards established by the FCC or other lawful authority: \$100 per day for each day the violation continues after a thirty-day cure period after the County gives the Grantee notice of such violation.

(f) Shortening, Revocation, or Termination of Franchise

(1) Upon completion of the term of any Franchise granted under this Agreement, if a new, extended, or renewed Franchise is not granted to the Grantee by the County, the Grantee's right to occupy the Public Rights-of-Way and public land shall terminate, subject to applicable federal law.

(2) The County shall have the right to revoke the Franchise, or to shorten the term of the Franchise to a term not less than thirty-six months from the date Grantee receives written notice from the County of the County's decision to act pursuant to [Section 11\(f\)\(3\)](#) herein concerning the County's shortening action, for the Grantee's material violation of this Agreement pursuant to [Section 12\(l\)\(2\)](#).

(3) To invoke the remedies of [Section 11\(f\)\(2\)](#), the County shall give the Grantee written notice of the default in its performance. If within sixty calendar days following such written notice from the County to the Grantee, or such other period as this Franchise Agreement shall require or the Grantee and the County shall agree, the Grantee has not taken corrective action to the reasonable satisfaction of the County, the County may give written notice to the Grantee of its intent to revoke or shorten the term of the Franchise, stating its reasons; provided that no opportunity to cure shall be provided where the Grantee is shown to have defrauded or attempted to defraud the County or its Subscribers in connection with this Agreement or Cable Service in any way that has a material adverse effect on Grantee's provision of Cable Services pursuant to this Agreement.

(4) Prior to shortening the term of or revoking the Franchise, the County shall hold a public hearing, after providing thirty days' written notice to the Grantee, specifying its reasons for shortening or revoking the Franchise, at which time the Grantee and the public shall

be given an opportunity to be heard. Following the public hearing, the County may determine whether to shorten the Franchise term or to revoke the Franchise based on the information presented at the hearing, and other information of record, or, where applicable, grant additional time to the Grantee to effect any cure. If the County determines to shorten the term of or revoke the Franchise, it shall adopt an ordinance that shortens the term of or revokes the Franchise and sets forth the reasons for its decision. A copy of such ordinance shall be transmitted to the Grantee.

(5) If the County revokes the Franchise, or if for any other reason the Grantee terminates the Franchise, the following procedures and rights are effective:

(A) The County may require the former Grantee to remove its facilities and equipment located in the Public Rights-of-Way or on public land at the former Grantee's expense and to restore such affected sites as required in [Section 5\(b\)\(9\)](#) or permit the former Grantee to abandon such facilities in place, subject to the provisions of [Section 5\(b\)\(14\)](#). If the former Grantee fails to remove its facilities within a reasonable period of time after the County orders it to do so, and such removal is necessary to make room for other facilities or to remove potential safety hazards as required by sound engineering practices, then the County may have the removal performed at the former Grantee's and/or surety's expense.

(B) The County may require the former Grantee to continue operating Grantee's Cable System as specified in [Section 4\(c\)](#).

(C) In the event of revocation, the County, in accordance with state law, may acquire ownership of or effect a transfer of Grantee's Cable System at an Equitable Price.

(g) *Condemnation.* This Franchise Agreement shall not limit any authority of the County in accordance with state law to condemn, in whole or in part, the Franchise and/or any other property of the Grantee, provided that the Grantee shall receive whatever condemnation award the Grantee would normally be entitled to recover as a matter of state law. Partial condemnation of the Grantee's Franchise or property shall not terminate this Agreement except in accordance with the terms of this Agreement.

12 MISCELLANEOUS PROVISIONS

(a) *Binding Acceptance.* This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns.

(b) *Severability.* If any term, condition, or provision of this Agreement shall, to any extent, be held to be invalid or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective. If the terms of this Agreement are materially altered due to changes in governing law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of Grantee and the County and preserves the benefits bargained for by each party.

(c) *Preemption.* In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, then the provision shall be read to be preempted to the extent and for the time, but only to the extent and for the time, required by law. In the event that any provision of this Agreement is preempted or enforcement

limited by any such provision of federal or state law, then the parties shall negotiate in good faith to reconstitute this Agreement in a form that, to the maximum extent possible, is consistent with the original intent of the Grantee and the County and preserves the benefits bargained for by each party. Finally, in the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

(d) *Equal Treatment.* The County shall comply with all state and federal laws regarding equal treatment of the Grantee and other entities.

(e) *Compliance With Applicable Laws.* The Grantee shall, at all times during the term of this Franchise Agreement, including any extensions thereof, substantially comply with all applicable and material federal, state, and local laws and regulations.

(f) *Force Majeure.* Notwithstanding any other provision of this Agreement, the Grantee shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due, directly or indirectly, to severe or unusual weather conditions, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, action or inaction of any government instrumentality or public utility including condemnation, accidents for which Grantee is not primarily responsible, fire, flood or other act of God, sabotage or other events to the extent that such causes or other events are beyond the reasonable control of the Grantee. In the event that any such delay in performance or failure to perform affects only part of the Grantee's capacity to perform, the Grantee shall perform to the maximum extent it is able to

perform and shall take all reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible.

(g) *Governing Law.* This Franchise Agreement shall be governed in all respects by the law of the Commonwealth of Virginia.

(h) *Notices.* Unless otherwise provided by applicable law or this Agreement, all notices or other written communications required to be given to the County under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid or delivered by hand in writing to the Communications Administrator. All notices or written communications required to be given to the Grantee under any provision of this Agreement or the Fairfax County Code shall be deemed served when regularly mailed, postage prepaid or delivered by hand in writing to the Grantee at the Grantee's last known address, to the attention of its President, with a copy to George L. Mahoney, Esquire, Media General, Inc., 333 East Grace Street, Richmond, VA 23219, or to such other Persons or addresses as Grantee may subsequently specify by notice.

(i) *Time of Essence.* In determining whether a party has substantially complied with this Franchise Agreement, the parties agree that time is of the essence.

(j) *Captions and Headings.* The captions and headings of sections set forth herein are intended solely to facilitate reading and reference to the sections and provisions of this Franchise Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

(k) *No Oral Modifications.* This Franchise Agreement shall not be changed, modified or amended, in whole or in part, unless an appropriate written instrument is executed by the County and the Grantee.

(l) *Rights and Remedies.*

(1) The rights and remedies reserved to both parties herein are cumulative and shall be in addition to all other rights and remedies which either party may have with respect to the subject matter of this Agreement, whether reserved herein or authorized by applicable law.

(2) The following violations by the Grantee of this Agreement are material for purposes of [Section 11\(f\)\(2\)](#):

(A) Transfer without approval pursuant to [Section 3](#), or failure to notify pursuant to [Section 3\(e\)](#);

(B) repeated or flagrant failure to satisfy line extension requirements pursuant to [Section 4\(b\)](#);

(C) substantial failure to provide Cable Service as specified in [Section 4\(c\)\(8\)\(A\)](#);

(D) repeated or flagrant failure to satisfy construction standards pursuant to [Section 5](#);

(E) substantial failure to meet system or institutional network upgrade schedule pursuant to [Section 6\(f\)](#) or the schedule for I-Net construction, if applicable, as specified in Appendix 2;

(F) repeated or flagrant failure to meet FCC technical standards;

- (G) failure to maintain the Emergency Alert System pursuant to [Section 6\(j\)](#) in the event of an emergency;
- (H) substantial failure to provide Total Grants pursuant to [Section 7\(c\)](#);
- (I) substantial failure to provide PEG facilities or equipment pursuant to [Section 7\(a\)](#);
- (J) substantial failure to provide PEG facilities or equipment pursuant to [Section 7\(d\)](#);
- (K) substantial failure to provide PEG facilities or equipment pursuant to [Section 7\(f\)](#);
- (L) if applicable, substantial failure to provide I-Net facilities or equipment pursuant to [Section 7\(k\)](#);
- (M) substantial failure to pay Franchise fees pursuant to [Section 8](#);
- (N) repeated or flagrant failure to meet reports and records requirements in a timely manner pursuant to [Section 9](#);
- (O) substantial failure to satisfy insurance requirements pursuant to [Section 10\(a\)](#);
- (P) substantial failure to maintain a bond or Security Deposit pursuant to [Section 11](#);
- (Q) repeated or flagrant violation of consumer protection requirements pursuant to applicable law;
- (R) repeated or flagrant violation of Subscriber privacy requirements pursuant to 47 U.S.C. § 551 or other applicable law;

(S) repeated or flagrant discrimination among Subscribers in violation of applicable law.

(m) *Obligations to Continue Throughout Term.* Unless specifically designated otherwise, all of the Grantee's obligations under this Agreement and the Franchise shall continue throughout the entire term specified in [Section 2\(c\)](#) or any extension hereof.

(n) *Cooperation in Obtaining and Implementing Grants.* The Grantee and the County agree to cooperate fully with each other in applying for or implementing any federal or state grants or other funds to be applied to the Grantee's Cable System.

(o) *Prohibition Against Discrimination.* The Grantee shall adhere to the Equal Employment Opportunity regulations of the FCC and to all federal, state and local laws, and executive orders pertaining to discrimination, equal employment opportunity and affirmative action that are applicable to the Grantee.

(p) *Connections to the Cable System; Use of Antennas.*

(1) To the extent consistent with federal law, Subscribers shall have the right to attach devices to the Grantee's Cable System to allow them to transmit signals or service to video cassette recorders, receivers and other terminal equipment, and to use their own remote control devices and converters, and other similar equipment, so long as such devices do not interfere with the operation of Grantee's Cable System, or the reception of any cable Subscriber, nor serve to circumvent the Grantee's security procedures, nor for any purpose to obtain services illegally. The Grantee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Grantee's Cable System.

(2) The Grantee shall not, as a condition of providing Cable Service, require a Subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield Grantee's Cable System from any interference.

(q) *Police Powers of the County.* Nothing in this Agreement shall preclude the County from exercising its police powers to enact, amend or supplement any law or regulation governing cable communications within the County of Fairfax.

(r) *Grantee Bears Its Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that the Grantee is required to perform must be performed at the Grantee's own expense.

(s) *County Bears Its Own Costs.* Unless otherwise expressly provided in this Agreement, all acts that the County is required to perform must be performed at the County's own expense.

(t) *Rights of Third Parties.* Nothing herein shall be construed to give any Person other than the Grantee or the County a right to assert any claim or cause of action against the Grantee or the County, its employees, elected or appointed officials, officers, commissions, commissioners, boards or agents, except as to parties enumerated in [Section 7\(c\)\(2\)](#).

(u) *Appendices.* The appendices to this Agreement (the "Appendices"), attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement. The procedures for approval of any subsequent amendment or modification to said Appendices shall

be the same as those applicable to any amendment or modification hereof, except as specified in such Appendices or elsewhere in this Agreement.

(v) *Entire Agreement.* This Agreement embodies the entire understanding and agreement of the County and the Grantee with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the County and the Grantee with respect to the subject matter hereof, including, without limitation, any and all written or oral statement or representations by any official, employee, agent, attorney, consultant, or independent contractor of the County or the Grantee.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date first above written.

THE BOARD OF SUPERVISORS OF
FAIRFAX COUNTY, VIRGINIA

BY: _____
Chairman, Board of Supervisors

BY: _____
County Executive

GRANTEE: MEDIA GENERAL CABLE OF
FAIRFAX COUNTY, INC., a Virginia
Corporation

BY: _____

Title: _____